BRARY
E COURT, U. S.

APPENDIX

FILED
JUL 11 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1231

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

SAVAIR MANUFACTURING COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 8, 1973
CERTIORARI GRANTED MAY 7, 1973

IN THE

Supreme Court of the United States

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[1] Hearing officer's report on objections and recommendation, Board's decision and certification of representative, and Board's decision and order are set forth in the appendix to the petition and thus are not reprinted here.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

8.12.70	Petition filed
8.21.70	Notice of Representation hearing, dated
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9.22.70	Notice of Election to be held
9.22.70	Tally of Ballots dated
9.22.70	Certification on conduct of election, dated
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10.28.70	Hearing closed
11.12.70	Hearing Officer's Report on Objections and Recommendation, dated
11.23.70	Employer's Exceptions to Hearing Officer's Report on Objections and Recommendations, dated
3. 3.71	Board's Decision and Certification of Representative, dated
4. 7.71	Employer's Petition to set aside Certification of Representatives and request for a rehearing on objections to election, dated
4.21.71	Charge filed
6.17.71	Board's Order denying Petition, dated
6.30.71	Complaint and Notice of Hearing, dated
7. 9.71	Answer to Complaint
8. 6.71	General Counsel's Motion for a more definite answer, dated

8.23.71 Trial Examiner's Order on Motion for a more definite answer, dated

9. 1.71 Trial Examiner's telegram correcting his order of August 23, 1971, dated

9. 9.71 Respondent's Amended Answer, dated

9. 9.71 Regional Director's Order postponing hearing indefinitely, dated

9.14.71 General Counsel's Motion to transfer case to and continue proceeding before the Board and for Summary Judgment, dated

9.22.71 Board's Order transferring proceeding to the Board and Notice to Show Cause, dated

11.23.71 Board's Decision and Order dated

12.11.72 Court of Appeals Decision

5. 7.73 Order granting Certiorari

PETITION TO SET ASIDE CERTIFICATION OF REPRESENTATIVE AND REQUEST FOR A REHEARING ON OBJECTIONS TO ELECTION

(April 7, 1971)

NOW COMES SAVAIR MANUFACTURING COMPANY, Employer, by its attorney, Robert J. Solner, and Petitions the National Labor Relations Board to set aside the Certification of Mechanics Educational Society of America, AFL-CIO, and requests the scheduling of a rehearing on the Objections to the Election, and in support thereof, says:

1. Pursuant to a Stipulation for Certification Upon Consent Election approved on August 27, 1970, an election by secret ballot was conducted on September 22, 1970, under the direction and supervision of the Regional Director for Region 7 among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 45 eligible voters, 44 cast ballots, of which 22 were for, and 20 against, the Petitioner, 1 was challenged, and 1 was declared void. The challenged ballot was not sufficient to affect the results of the election. Thereafter, the Employer filed timely objections to the conduct of the hearing and to the conduct affecting the results of the election.

2. That pursuant to Section 102.69(e) of the Board's Rules and Regulations a notice of hearing was issued on October 8, 1970 and a hearing was conducted pursuant to above section and in accordance with the provisions of Sections 102.64, 102.65, and 102.66 on October 28, 1970.

3. That the above sections require that it shall be the duty of the Hearing Officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which the Board may discharge their duty under Section 9(c) of the Act. The hearing officer further has the power to call, examine and cross-examine witnesses.

4. That the Employer has just been informed that prior to the date of the hearing held on October 28, 1970, certain employees of Savair Manufacturing Company notified the Regional Director of the National Labor Relations Board, Region 7, that they wished to protest or object to the Union election, and their complaints set forth conduct that could have affected the results of the election, as evidenced by the copy of a letter of reply from the Regional Director dated October 21, 1970 and attached hereto and made a part hereof.

5. That the Regional Director did not explain to these employees that they were allowed to appear at the Hearing and voice their objections, but in fact discouraged them from proceeding further by stating they were not a party to this representation proceeding and have no standing under the law to file objections to the election.

6. That the Hearing Officer failed to call these parties as witnesses after knowing they voiced objections to the election, and the Regional Director failed to notify the Employer, and possibly the Union, although this is unknown to the Petitioner, that certain employees desired to voice a protest to the conduct of the election, which is a direct violation of the Board's Rules and Regulations requiring a full inquiry into all matters in issue and to obtain a full and complete record upon which the Board may discharge their duties.

7. That to allow and condone the sequestering of facts by a Regional Director which might affect the result of a hearing would be as bad as to ignore or allow ex parte prohibited communications as both instances would defeat the whole purpose and spirit of the law.

WHEREFORE, Petitioner requests that the Board set aside the certification and grant a rehearing on the Objections to the Election in order to present all the facts

before the Hearing Officer and thereby allow the Board in their decision to discharge their duty under the law.

/s/ Robert J. Solner
ROBERT J. SOLNER
Attorney for the Employer,
Savair Manufacturing Company
1100 N. Woodward Avenue
Birmingham, Michigan 48011
642-2555

Dated: April 7th, 1971

(Seal) NATIONAL LABOR RELATIONS BOARD
Region 7
500 Book Building, Detroit, Michigan 48226
Telephone 226-3200

October 21, 1970

Mr. Jack E. Reibling
29287 Dembs
Roseville, Michigan 48066

Re: Savair Manufacturing Company
Case No. 7-RC-10098

Dear Mr. Reibling:

This will acknowledge your letter of October 15, 1970, and its contents have been noted.

You indicate that you want to object to the election that was conducted in the above matter on September 22, 1970 for certain enumerated reasons. Although, this is commendatory on your part to bring to our attention conduct which you believe had a coercive impact upon the results of the election, I must regretfully advise you that since you are not a party to this representation proceeding you have no standing under the law to file objections to the election. Additionally, such objections must be filed within five working days after the election has been conducted. Some of the alleged conduct that you set forth may not necessarily be grounds for setting the election aside such as the buying of drinks or the union's promises of what it would accomplish if it were to be selected as bargaining agent. Nevertheless, I wish to observe that objections to the election were indeed timely filed by one of the parties to this proceeding and following preliminary investigation of same has been set down for hearing and should be heard on October 28, 1970. Although, the objections as filed do not specifically encompass the complaints you raise in your letter, yet it may very well be that some of these may be adduced in the hearing.

If you have any further questions, please feel free to call upon this office.

Very truly yours,

/s/ Jerome H. Brooks
JEROME H. BROOKS
Regional Director

BG:lap

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

VIVIAN M. NADER, being first duly sworn, deposes and says:

That she is an employee of SHEA, SHEA, HEATH & SOLNER, attorneys for SAVAIR MANUFACTURING COMPANY, and that a copy of the Petition to Set Aside Certification of Representative and Request for a Rehearing on Objections to Election was mailed by regular mail to the local regional director:

Mr. Bernard Gottfried, Acting Regional Director,
Region 7
National Labor Relations Board
500 Book Building
1249 Washington Boulevard
Detroit, Michigan 48226

and also a copy was mailed to the attorney of record for the Petitioner, Eugene A. O'Leary, Esq., to: 1714 Guardian Building, Detroit, Michigan 48226 by placing same in the United States Mail depository in Birmingham, Michigan, addressed to the respective addressees with adequate postage prepaid.

/s/ Vivian M. Nader
VIVIAN M. NADER

Subscribed and sworn to before me this 7th day of April, 1971.

/s/ Frederick Wm. Heath
FREDERICK WM. HEATH
Notary Public, Oakland
(acting in Wayne) County,
Michigan

My commission expires: 6/24/72

ORDER DENYING PETITION

(June 17, 1971)

A hearing was held in the above-entitled proceeding on October 28, 1970, to resolve issues raised by the Employer's objections to the election conducted herein on September 22, 1970. After the hearing, during which all parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues, the Hearing Officer, on November 12, 1970, issued and served on the parties his Report, recommending that the Board overrule the Employer's Objections and issue a Certification of Representative. The Employer filed timely exceptions to the Hearing Officer's Report.

On March 3, 1971, the National Labor Relations Board issued a Decision and Certification of Representative in which the Board, *inter alia*, adopted the Hearing Officer's findings and recommendations as contained in his Report, and certified the Petitioner as the exclusive bargaining representative of the Employer's employees in an appropriate unit.

On April 12, 1971, the Employer filed a so-called Petition to Set Aside Certification of Representative and Request for a Rehearing on Objections to Election. The Employer contended that it had just been informed, that, prior to the date of the hearing, certain employees of the Employer notified the Regional Director that they wished to protest or object to the election, that the Regional Director did not explain to these employees that they were allegedly allowed to appear at the hearing and voice their objections, that the Hearing Officer failed to call these employees as witnesses and that the Regional Director failed to notify the Employer of these employees' objections in violation of the Board's Rules and Regulations. It requests that the Board set aside the certification and grant a rehearing on the objections in order that all the facts might be presented before the Hearing Officer.

The Board, having duly considered the matter, concludes that the Board's Rules and Regulations have not

been violated, as alleged. Rather, they clearly establish that the employees in question are not parties with standing to file objections. Accordingly,

IT IS HEREBY ORDERED that the Employer's so-called Petition be, and it hereby is, denied as lacking merit.

Dated, Washington, D. C., June 17, 1971.

By direction of the Board:

/s/ George A. Leet
GEORGE A. LEET
Associate Executive Secretary

COMPLAINT AND NOTICE OF HEARING

(June 30, 1971)

It having been charged by Mechanics Educational Society of America, AFL-CIO, herein sometimes called the Union, that Savair Manufacturing Company, herein sometimes called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the Acting General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director for the Seventh Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge in this proceeding was filed by the Union on April 12, 1971, and served by registered mail upon Respondent on or about April 12, 1971.

2. Savair Manufacturing Company is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Michigan.

3. At all times material herein, Respondent has maintained its principal office and place of business at 24488-24536 Gibson Drive, in the City of Warren, and State of Michigan, herein called the Warren installation. At all times material herein Respondent has maintained another installation at 10900 Charlevoix St., Detroit, Michigan, herein called the Detroit installation. Respondent is, and has been at all times material herein, engaged in the manufacture, sale and distribution of machine parts, and related products.

4. During the year ending December 31, 1970, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations had a gross revenue in excess of $500,000 and purchased and caused to be transported and

delivered at its Warren and Detroit installations, steel, and other goods and materials valued in excess of $50,000, which were transported and delivered to its Warren and Detroit installations directly from points located outside the State of Michigan.

5. Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. The Union is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named persons occupied the positions set opposite their respective names, and have been and are now supervisors of the Respondent, within the meaning of Section 2(11) of the Act, and its agents:

Michael Wolfbauer	President
Eugene A. Wolfbauer	Vice-President

8. All production and maintenance employees employed by the Respondent at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

9. On September 22, 1970 a majority of the employees in the unit described above in paragraph 8 designated and selected the Union as their representative for purposes of collective bargaining with Respondent in a Board-conducted election, pursuant to a Stipulation for Certification upon Consent Election in Case No. 7-RC-10098, and on March 3, 1971 the Union was certified by the Board as the exclusive collective bargaining representative of all employees in said unit.

10. At all times since March 3, 1971 and continuing to date, the Union has been the representative for purposes of collective bargaining of the employees in the unit described above in paragraph 8, and by virtue of Section

9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

11. Commencing on or about March 5, 1971, and more specifically, by letter on March 5, 1971, March 19, 1971, April 2, 1971, and June 18, 1971 and continuing to date, the Unicn has requested and is requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees of the Respondent in the unit described above in paragraph 8.

12. Since March 5, 1971 and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of all the employees in the unit described in paragraph 8 in that:

> At all times since March 5, 1971 and continuing to date, Respondent has refused and continues to refuse to meet, confer, or otherwise bargain and negotiate with the Union regarding the wages, hours, and other terms and conditions of employment of employment of the employees in the unit described above in paragraph 8.

13. By the acts described above in paragraph 12, Respondent did refuse to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

14. By the acts described above in paragraph 12, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15. The acts of Respondent described in paragraph 12, above, occurring in connection with operations of Respondent described in paragraphs 2, 3, 4, and 5 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a), (1) and (5) and Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Bargain upon request with the Union as exclusive representative of all production and maintenance employees employed by Respondent at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act; and reduce to writing and execute any agreement reached.

2. Cease and desist from refusing to bargain with the Union in the manner set forth in paragraph 12 and from in any other manner interfering with, restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

3. Post appropriate Notices to All Employees.

It is also prayed that said Order provide for any further relief deemed appropriate herein.

PLEASE TAKE NOTICE that on the 9th day of September, 1971, at 10:00 a.m., Eastern Standard Time, at Room 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise and give testimony. Form NLRB-4668, Summary of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that pursuant to Section 102.20 and 102.21 of the Board's aforementioned Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board.

Dated at Detroit, Michigan, this 30th day of June, 1971.

/s/ Bernard Gottfried
BERNARD GOTTFRIED
Acting Regional Director
National Labor Relations Board
Seventh Region
500 Book Building
1249 Washington Boulevard
Detroit, Michigan 48226

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "pre-hearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own

initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record—for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Trial Examiner conducting the prehearing conference will be the one who will conduct the hearing; and *it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference.* No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purpose. To the contrary, the parties are encouraged to meet prior to the time set for the hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any trarscript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rul-

ings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed *before* the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed find-

ings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

Answer to Complaint

(July 9, 1971)

NOW COMES ROBERT J. SOLNER, Attorney for Respondent, SAVAIR MANUFACTURING COMPANY, and in answer to the Complaint of the Union that the Respondent has engaged in, and is engaging in, certain unfair labor practices, says:

1. Admits the same.
2. Admits the same.
3. Admits that the Respondent has maintained the place of business at 24488-24536 Gibson Drive in the City of Warren, and State of Michigan, but does not maintain any installation at 10900 Charlevoix Street, Detroit, Michigan, and admits the remaining allegations contained therein.
4. Admits the same.
5. Admits the same.
6. Neither admits nor denies but leaves the Union to its proof.
7. Admits the same.
8. Neither admits nor denies but leaves the Union to its proof.
9. Denies the same and in further answering states that the Union is not the proper representative for purposes of collective bargaining of the employees of the Respondent for the reason that the Union, prior to the election, engaged in conduct which could or would affect the results of the election and the N. L. R. B. did not hold a full and impartial hearing to determine if the conduct of the Union was such that it could or would have affected the outcome of the election.
10. Denies the same for the reasons set forth in paragraph 9.
11. Denies the same for the reasons set forth in paragraph 9.
12. Denies the same for the reasons set forth in paragraph 9.
13. Denies the same for the reasons set forth in paragraph 9.

14. Denies the same for the reasons set forth in paragraph 9.

15. Denies the same.

16. Denies the same.

WHEREFORE, it is prayed that this Complaint alleging unfair labor practice be dismissed as no cause for action.

ROBERT J. SOLNER
Attorney for Respondent
1100 N. Woodward Avenue
Birmingham, Michigan
48011
642-2555

Dated July 9, 1971

AMENDED ANSWER

(September 9, 1971)

Pursuant to an Order of the National Labor Relations Board requiring a more definite answer to paragraphs 11 and 12 of the Complaint, the Respondent says:

1. Answering paragraph 11, the Respondent admits the receipt of letters from the Union dated March 5, March 15, April 2, and June 18, 1971; however, the Respondent had a petition pending before the National Labor Relations Board and had not received an order disposing of the petition prior to the date of the receipt of all letters, and since the receipt of the Order Denying the Petition, on June 21, 1971, the Respondent has received no request from the Union to bargain.

2. Answering paragraph 12, Respondent has refused to bargain with the Union as the Union is not the proper representative of the employees of the Respondent due to the fact the Union engaged in conduct that could or would affect the results of the election and the National Labor Relations Board did not hold a public, impartial and fully represented hearing to determine if the conduct of the Union was such that it could or would have affected the outcome of the election.

Wherefore, Respondent prays for a dismissal of no cause of action.

/s/ Robert J. Solner
ROBERT J. SOLNER
Attorney for Respondent
1100 N. Woodward Avenue
Birmingham, MI 48011
642-2555

Dated: September 9, 1971

ORDER TRANSFERRING PROCEEDING TO THE BOARD AND NOTICE TO SHOW CAUSE

(September 22, 1971)

On June 30, 1971, the Acting Regional Director for Region 7 of the National Labor Relations Board issued a Complaint and Notice of Hearing in the above entitled proceeding, alleging that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed an answer and, thereafter, an amended answer, admitting in part and denying in part the allegations of the complaint, and requesting that the complaint be dismissed as no cause for action.

Thereafter, on September 14, 1971, the General Counsel, by counsel, filed with the Board a Motion to Transfer Case to and Continue Proceeding before the Board and for Summary Judgment. The General Counsel submits, in effect, that the Respondent, in its answer and amended answer, raises no issues which were not or could not have been litigated in the related representation proceeding in Case 7-RC-10098, that the pleadings reveal that there are no disputes with respect to any relevant or material facts which would necessitate a hearing or a Trial Examiner's Decision, and that the operative facts admitted or affirmatively pleaded suffice to establish that Respondent has violated Section 8(a)(1) and (5) of the Act. He, therefore moves that the matter be transferred to and continued before the Board, and that the Board cause to be issued a Decision containing findings of fact, conclusions of law, and remedial order consistent with the conclusions that Section 8(a)(1) and (5) of the Act has been violated.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D. C.

NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Board in Washington, D. C., on

or before October 6, 1971, (with affidavit of service on the parties to this proceeding), why the General Counsel's Motion for Summary Judgment should not be granted.

Dated, Washington, D. C., September 22, 1971

By direction of the Board:

John C. Truesdale
Deputy Executive Secretary

TRANSCRIPT OF TESTIMONY

[1] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Seventh Region

Case No. 7-RC-10098

In the Matter of:

SAVAIR MANUFACTURING COMPANY, EMPLOYER

and

MECHANICS EDUCATIONAL SOCIETY OF AMERICA, AFL-CIO, PETITIONER

Room 555-A, Book Building,
Detroit, Michigan 48226,
Wednesday, October 28, 1970.

Pursuant to notice, the above-entitled matter came on for hearing at 9:00 o'clock, a.m.

BEFORE:

Mr. Thomas Wilks, Hearing Officer.

APPEARANCES:

Mr. Robert J. Solner, Shea, Shea, Heath & Solner, 1100 North Woodward Avenue, Birmingham, Michigan 48011, appearing on behalf of Savair Manufacturing Company, the Employer.

Mr. Eugene O'Leary, 1714 Guardian Building, Detroit, Michigan 48226, appearing on behalf of Mechanics Educational Society of America, AFL-CIO, the Petitioner.

[3] PROCEEDINGS

Hearing Officer: The hearing will be in order.

This is a hearing before the National Labor Relations Board in the matter of Savair Manufacturing Company,

Case No. 7-RC-10098.

This hearing is held pursuant to an order of the then Acting Regional Director, dated October 8, 1970.

The Hearing Officer conducting this hearing is Thomas R. Wilks, W-i-l-k-s.

* * * *

[4] Will counsel and other representatives for the parties please state their appearances for the record? For the employer?

Mr. Solner: My name is Robert J. Solner, S-o-l-n-e-r, I am the attorney representing Savair Manufacturing Present here also is—

Mr. Wolfbauer: Eugene A. Wolfbauer.

Hearing Officer: Is Mr. Wolfbauer making an appearance as representative?

Mr. Solner: Yes.

Hearing Officer: Is that all?

Mr. Solner: That is all.

Hearing Officer: For the petitioner?

Mr. O'Leary: My name is Eugene A. O'Leary, and I am appearing for the union the MESA. On my right here is Mr. Smith, secretary-treasurer, that is Alfred Smith and Orville Plake, National Representative, of the MESA.

Hearing Officer: Very good.

I have marked as Board's Exhibits 1(a) through 1(c) the original notice of hearing on objections, dated October 8, 1970 and the proof of service.

(The documents referred to were marked Board's Exhibits Nos. 1(a) thru 1(c) for identification.)

[5] Hearing Officer: Are there any objections to putting into evidence the formal Exhibits?

Mr. Solner: No objection.

Mr. O'Leary: No objection.

Hearing Officer: It is received.

(The documents heretofore marked Board's Exhibits Nos. 1(a) thru 1(c) for identification were received into evidence.)

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[6] DONALD BRIDGEMAN

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Solner) Where do you live, Mr. Bridgeman?

[7] Mr. O'Leary: Excuse me, what was the first name?

Hearing Officer: Would you state your name for the record?

Witness: Donald.

Mr. O'Leary: Donald Bridgeman?

Witness: Yes.

Q. (By Mr. Solner) Where do you live? A. 53180 Fairchild, Mt. Clemens, Michigan.

Q. You are employed by whom? A. Savair Manufacturing.

Q. How long have you been employed by Savair Manufacturing Company? A. Altogether probably around seventeen years.

Q. Which plant are you presently employed? There were two locations. You are at Gibson Avenue plant now? A. Yes.

Q. When did you move to Gibson Avenue plant? A. A couple months ago, about a month ago or so.

Q. Before being there where were you employed? A. Charlevoix Avenue.

Q. How long were you in the Charlevoix plant? A. Ten years at least over there.

Q. Approximately six months ago there was some organization for union representation in the Charlevoix plant, is that correct? A. Yes, sir.

Q. At the time there was this representation were there any [8] meetings called? A. Not until, there was not direct meetings called until after we had signed the recognition slip they call it, unless a meeting was called between one fellow and the representatives of the MESA.

Q. Were you present at any meetings yourself? A. Yes, I was.

Q. You were present in a meeting? A. Yes, I was.

Q. Would you tell me when that meeting took place? A. It was the first meeting on a Saturday morning.

Q. Where was this meeting held? A. Nine Mile at a VFW hall.

Q. Do you remember the approximate date? A. It was within a couple weeks after the tickets were mailed in a letter.

Hearing Officer: I don't know when those dates occurred. Can you narrow it down to a date, month, the prior month?

Witness: If I have my letter with me. I don't have my letter. We did have a letter. The first letter was sent—

Hearing Officer: Unless there is a possibilty of reaching a stipulation.

Witness: It was the first meeting, I can tell you that much. And it was on Saturday morning.

Mr. Solner: The company received a notice of petition [9] being filed on August 12, 1970. So it would be sometime after August 12 if you recall.

Witness: Yes.

Q. (By Mr. Solner) Do you remember how long after? A. Like I say if I had my first letter but I disposed of my letters because I figured this thing was over with here and I discarded it.

Q. We just want to know approximately—

Hearing Officer: Before we do that can we stipulate then that the petition in this matter was filed on August 12, 1970?

Mr. O'Leary: You mean the first meeting?

Hearing Officer: The petition. You have to remember, gentlemen, I don't have access to this file.

Witness: I would say September.

Hearing Officer: Just a minute. You answer questions when they are put to you. We have to have some order.

Mr. Solner: I have a copy of the petition we received dated August 12.

Mr. O'Leary: We agree the date of August 12 was the date the petition was signed.

Hearing Officer: That stipulation is recevied.

Mr. Solner: The petition was filed on August 12 and this meeting occurred a week or ten days after this?

Witness: Yes, it was after that.

Q. (By Mr. Solner) Who was present at this meeting? [10] A. Roughly nineteen or twenty men roughly.

Q. What was discussed at this meeting? A. Various things, types of work we did. Some thought they should get more money and things of that nature. There was also one question was put forth about the recognition slips. There was a question put forth on that question.

Q. Who put that question? A. My brother.

Q. What was the question he put forth? A. He asked Mr. Smith there at the meeting if there was a fee, not fine we won't call it a fine, to join an initiation fee.

Q. Do you remember the exact words? A. My brother Bob just asked Mr. Smith if there was a fee, you know if you didn't sign the slip and it wasn't turned in before the election. There is a small fee but it was never stipulated what the amount of fee would be.

Q. What was Mr. Smith's answer to your brother? A. There would be a small fee.

Q. Was this a fee that was to be paid by all the members? A. No, if you signed the slip you automatically could belong to the union, but for fellows that hadn't turned in a recognition slip prior to the vote and that until the union got in, the majority rules, in other words, you would have to pay a small fine whatever it would be.

Q. Those that didn't sign the card would have to pay a fine? [11] A. Right.

Q. And those that did sign a card wouldn't pay a fee? A. No, you didn't have to pay if you turned in a slip. There was a fellow present that volunteered that he wanted to sign the slip.

* * * *

[12] Q. After this meeting was there any discussion between you and anybody else in the union regarding this initiation fee or this fine as you call it? A. When this all came about it is like anything else one is for and one is against so we always approached somebody and kid or rib them and things like that. Of course some of us fel-

lows did say to other fellows that were really against it and have always been against it you better sign your ticket and turn it in because if you didn't if it does get voted in, if the majority of the men vote the union in, at least you have to pay your dues which is very natural but you wouldn't have to pay no initiation fee.

Q. So that if in fact the union was voted in somebody did say that they would have to pay an initiation fee, those that hadn't signed cards? [13] A. Right.

Q. Who actually told you this? A. The man's name?

Q. Yes, I would likt to know the man's name. A. Benny McKnight.

Q. Benny McKnight, was he an observer for the union at the election, do you recall or do you know? A. I wasn't at the plant because they had two different ballotings, two or three.

Q. Has he been a spokesman basically for the union? A. Yes.

Hearing Officer: What do you mean by that a spokesman for the union?

Witness: He was more or less helping organize.

Hearing Officer: He was an employee of the company?

Witness: He is an employee for the company but for the union he was handing out the slips. He was helping to get it started.

Q. (By Mr. Solner) He was the one that actually come out with the cards the first time? A. Yes, and give the tickets out.

Hearing Officer: The union authorization cards?

Witness: Yes.

Q. (By Mr. Solner) This all took place prior to the election that was held? [14] A. Yes. In fact some of them even got mad,

Q. These were comments that were made to you right up to the time of the election regarding the fine or the assessment that would be? A. Yes.

Q. Those who had actually signed cards were not going to pay and assessment and those that didn't would? A. Yes.

* * * * .

[16] *Cross-Examination*

Q. (By Mr. O'Leary) Mr. Bridgeman, you say you have worked for Savair for seventeen years? A. Yes sir, since I was a kid.

Q. At the time this first union activity was started you were working the Charlevoix plant? A. Yes sir.

Q. When did you first hear for the first time, I am not talking about the meeting, that there was union activity in the plant? A. When I came back, when Carroll Bridgeman went on vacation.

Q. When would that be, sometime in July or August?

Mr. Solner: We are talking about 1970?

Mr. O'Leary: Yes, 1970.

Witness: It was on his vacation I was approached then.

Q. (By Mr. O'Leary) When who was on vacation? A. The plant superintendent.

Q. Do you know what month it was? A. I believe Carroll went in July sometime, the latter part of July.

Q. That's when you first heard of the union activity? A. I think it was in July sometime he went.

Q. Can you get it any closer? That was the end of July or the [17] middle of July? A. I think he went after the Fourth of July, I am not sure of the date Carroll went on vacation.

Q. That was when you first heard of union activity? A. It depends on what you want to call it. You hear people gripe well if this isn't this way I can call the union, or if this isn't that way you can call the union. But actually when I was approached or when the tickets were being given out to my knowledge was when Carroll Bridgeman was on his vacation. That's when the slips to my knowledge was being given out.

Q. You said you did hear discussions of union slip around the first part of July in answer to that question? A. As I said before there is a lot of things.

Q. You can answer yes or no. A. I have heard people talk about unions before, before that.

Q. Was that discussion made with some of your fellow employees? A. A lot of times people talk together.

Q. Answer my question please. That discussion whatever you talked about or heard was among the fellow employees of the plant there? A. I will tell you in my words. You use your words and I will tell you mine and then you can tear it down after that if you want.

At the shop there you get a few hotheads and they get it in for somebody because something doesn't go their way and then [18] they think they are going to put the hooks into somebody, so they are gonna get the union on them. That is up to them and—

Hearing Officer: I want to stop that right there. We are not really interested in the motivation. We want to identify with whom you had this conversation.

Mr. Solner: I don't think he understood the question.

They want to know whether it was a union representative talking to you, or whether it was fellow employees. There is a difference you see. Naturally, what they are trying to get at is whether it was an employee of the company or whether it was one man from the union itself talking to you.

Witness: Like I say I did get approached. Yes, I was if you want to break it down. I was approached by a fellow that belongs to the union.

Q. (By Mr. O'Leary) In the first part of July? A. When I came back from my vacation and Carroll went on his.

Q. Who was that man? A. Benny McKnight.

Q. Who is Benny McKnight? A. Inspector.

Q. An inspector? A. He is an inspector for the company.

Q. That was a fellow employee or is he a fellow employee? A. Yes, he worked there.

Q. It wasn't with any member of the union? [19] A. He is the one it was.

Q. Just answer my question. You had no conversation with any member of the union at that time? A. Not direct, no.

Hearing Officer: You mean an employee member of the union?

Witness: That's what I was trying to find out.

Hearing Officer: An employee member of the union or representative?

Mr. O'Leary: Just a plain employee.

Hearing Officer: Your question was whether he is a member of the union or is your question directed to whether he had a conversation with a representative such as a business agent, president, vice president or officer?

Mr. O'Leary: Yes.

Hearing Officer: Your answer, sir, is I think that you had a conversation with Benny McKnight a fellow employee who occupied the position of an inspector?

Witness: Yes.

Q. (By Mr. O'Leary) When were you first approached on signing a card asking the MESA represent you? A. The first or second day that Carroll was on vacation. This all took place the week he was—

Q. Was that in July? A. If they had his vacation record there they can tell you when he was on vacation.

[20] Hearing Officer: You don't remember whether it was in July?

Witness: I believe it was in July.

Q. (By Mr. O'Leary) Did you sign a card at that time? A. Not on the first day, no. In fact my card I give to somebody else.

Q. Did you eventually sign a card? A. Yes, I did.

Q. When was that? A. Right near the end before Benny turned them in after he had—

Q. Getting down to months and days was that in July or August if you know? A. It might be the end or the first part of August because they applied I think in August for recognition. I know we had a meeting and I believe it was in August if I am not mistaken, maybe the third week or something. I don't recall.

Q. Anyway you did sign a card? A. Yes sir, I did.

Q. When is the first time you met Mr. Smith here? A. At the first meeting.

Q. When that meeting was on—

Hearing Officer: This is Mr. Smith who is sitting at the petitioner's table?

Witness: Yes sir.

Q. (By Mr. O'Leary) And that was at the August 17 meeting? A. Twenty-seven I guess.

[21] Q. That was on August 22? A. If that's the date.

Q. Where was that meeting at? A. VFW hall by Nine Mile and Van Dyke.

Q. Was there some discussion on initiation fee? A. Yes, there was.

Q. Did somebody ask if they would have to pay a standard initiation fee? A. No standard just initiation fee.

Q. In other words, you just said that question do we have to pay initiation fee? A. Yes sir.

Q. Did Mr. Smith answer that question? A. Yes.

Q. What did he say? A. That there would be some charge but that's because a majority rules in that case.

Hearing Officer: Just a minute. Is this what Mr. Smith said that the majority rules? Limit your answer to what Mr. Smith said.

Witness: He did answer the fellow that placed the question that there would be a fee but no set price was put on it. I mean like standard, what do they consider standard five, ten, fifteen, twenty.

Hearing Officer: Just relate what you heard Mr. Smith say [22] and avoid your conclusions of what it meant. Just give us what Mr. Smith said and we will draw our conclusions from that.

Q. (By Mr. O'Leary) Was there something said at that meeting about the initiation fee being waived at that time? A. Not that I can recall.

Q. Or anything said about initiation fee would have to be paid later? A. Yes, that's what the question was asked for.

Q. That's was at that meeting on August? A. The first meeting.

Q. Did anybody ever threaten you in any manner that you would have to do this or do that? A. The only thing that you could consider would be a threat was if you didn't sign this card that you would pay a fee. In other words, if you wanted to save yourself the cost of the fee that you would sign a card and turn it in. It was that simple.

Q. Who made that statement? A. Mr. McKnight. Here is how it come about. There was things said around the shop, you know like when union is coming in men talk. A lot of the fellows are against the union and some of them are for it which is natural. These fellows that were agin it that was me, then I asked Benny if this was true. And Benny said it was true that he would check into it. I also told another fellow Mr. Hauser I told him, I says "John", in fact he got mad at me—

[23] Hearing Officer: John who?

Witness: Hauser.

Hearing Officer: What is his position?

Witness: He works in the lathe department for Savair as an employee. I told him, I says "John, you would be better off even if you didn't want the union you would actually be better off to go ahead and fill out a card and give it back to Benny rather than take a chance", because we didn't know how much it was, if it would be five, ten, fifty or seventy-five, we didn't know how much money it would be, you know, if the union came in and you hadn't signed the card and turned it in.

He got mad at me. He did after awhile he signed his card and turned his in because he was taking no chances on paying any money. But Sherman I think signed one too, but another fellow he got mad too, he got mad at me, two or three fellows got mad at me when I asked them about that, because I told them "gee, you guys better sign because if you don't and it comes in you have to pay".

Q. (By Mr. O'Leary) Let me ask you this question. You signed this card? A. Yes.

Q. Nobody forced you to sign that card did they? A. Nobody put a gun at my head.

Q. You signed it of your own free will did you not? A. I signed this card so that if this union come in I wouldn't [24] have to pay an initiation fee.

Q. Did you want to belong to the union? A. Truthfully?

Q. Yes. A. I don't need the union.

Hearing Officer: Let's not go into that motivation.

Q. (By Mr. O'Leary) Nobody threatened you or made you sign the card did they? A. If you want to save the money you sign the card. If you don't nobody—

Q. I didn't ask that. You can answer this question. Did anybody threaten you to make you sign that? A. It depends on what you consider a threat. If somebody come up and punched you in the eye and says if you don't sign it, no.

Q. Did they do anything that coerced you to sign it? A. Sure.

Q. What? A. That fine, I wasn't going to take a chance to find out. And if you want to call it whatever words you call it that is up to you but if somebody is going to charge you something if it doesn't amount to anything you are just as well off to sign it and have it in.

Q. How much did you pay? A. I didn't pay nothing, because I don't know how much it is. In fact this fellow got mad at me and he says why didn't the guys [25] go and call down and find out how much money it cost.

Mr. O'Leary: That's all.

Hearing Officer: Did you call down to fine out how much it was?

Witness: No, the cards were turned in. But the guys got mad at me. That is true I mean.

Hearing Officer: Okay, that's enough.

* * * *

[26] Q. (By Mr. Solner) Were you present when a conversation was had between someone whom you consider as a union representative and another employee regarding his activities against the union and talking against the union vote. A. I was told by this man, he was the one—

Hearing Officer: Just a minute now. Can you identify the persons whose conversation you heard?

Witness: Let me say I didn't—

Hearing Officer: Just a minute. We will do this in an orderly fashion. And I want to know first of all the name of the union representative.

Witness: He is an employee of the shop.

Hearing Officer: Who is the union representative who made [27] the statement, first of all I want to know that.

Witness: He is for the union.

Hearing Officer: Is an officer of the union?

Witness: No, no, he was—

Hearing Officer: It is a fellow employee?

Witness: Yes.

Hearing Officer: And the conversation was with another fellow employee?

Witness: Yes.

Hearing Officer: Mr. Solner, how can we allege that a conversation between two employees contributed to—

Q. (By Mr. Solner) Was this employee one who was handing out cards? A. He was for the union strongly and he still is.

Q. Was he handing out cards?

Hearing Officer: First of all,—

Mr. O'Leary: Objection.

Hearing Officer: First of all, let's identify the employee he is talking about.

Witness: Art Bodowski.

Q. (By Mr. Solner) Mr. Bodowski, did he hand out any cards? A. Not as far as I know he didn't hand out any cards but him and Benny—

Mr. O'Leary: Now—

Q. (By Mr. Solner) We are establishing one thing, what his connection [28] was with the union. What did he do that you know about that would make him a representative of the union? A. He is very strong for it.

Mr. O'Leary: Just a minute. How does he testify as to what qualifies a man for the union?

Hearing Officer: All right.

Mr. Solner: From his own personal experience.

Hearing Officer: The objection is sustained. I presume the question is what did you observe Mr. Bodowski do on behalf of the union if anything?

Mr. Solner: Right.

Witness: He was very much for it, spoke for it and a remark was made by a fellow employee that if he didn't quit talking the union down that they were going to turn him in to the National Labor Relations Board for talking against the union. And this I don't know if it can be done.

Mr. Solner: No further questions. He is not a union representative as such.

Mr. O'Leary: Just one question.

Recross-Examination

Q. (By Mr. O'Leary) All this conversation you are talking about was between employees, is that right? A. True.

Mr. O'Leary: That's all.

Hearing Officer: You are excused.

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[29] KENNETH BJORNHOLM

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

Hearing Officer: Will you state your name?

Witness: Kenneth Bjornholm, B-j-o-r-n-h-o-l-m.

Hearing Officer: Sit down.

Direct Examination

Q. (By Mr. Solner) Your full name please? A. Kenneth Bjornholm.

Q. Where do you live? A. 126—

Mr. O'Leary: I didn't get the last name. Is that B-j-o-r-n—

Witness: H-o-l-m. I live at 12648 Flanders, Detroit.

Q. You are employed by Savair Manufacturing Company? A. Yes sir.

Q. How long have you been employed by Savair? A. Six and a half years.

Q. Were you located at the Charlevoix plant before they closed it? A. Yes, I was.

Q. When did you go from the Charlevoix plant to the Gibson plant? [30] A. I think it was the third week in September.

Q. Just before the election was held? A. Right.

Q. While you were at the Charlevoix plant did you attend any meetings that the union called? A. No, I didn't.

Q. Did you have any contact with anyone regarding the union at the shop? A. The employees were talking among ourselves.

Mr. O'Leary: Will you talk a little bit louder,

Witness: I said we were talking among ourselves as employees.

Q. (By Mr. Solner) Was there any person there who indicated to you that he was representing the union or representing the position of handing out cards? A. Yes, Benny McKnight.

Q. Were you informed or were you led to believe that if you did not sign a card that you would pay an assessment? A. This is what I understand.

Q. Tell the Examiner what your actual feeling was in regard to this and what your understanding was in regard to this?

Hearing Officer: I would rather have from you what you heard said about it, what Mr. McKnight said about that.

Witness: Mr. McKnight himself didn't tell me.

Q. (By Mr. Solner) Who did tell you? A. Donald Bridgeman and Sherman Rice and everybody else generally [31] they were all talking about it because they were all upset about it.

Q. What did you specifically hear? A. I heard if you didn't sign the card you would have to pay.

Mr. O'Leary: I object to that what he heard. Let's identify people here, who told him what? He is talking about fellow employees.

Hearing Officer: Let's identify.

Witness: Donald Bridgeman and Sherman Rice.

Mr. O'Leary: They are not members of the union.

Q. (By Mr. Solner) Was anyone telling you that that was trying to get you to sign a card? A. No.

Q. In other words, no one was actually attempting to get you to sign a card? A. Benny gave me a card or Mr. McKnight he gave me a card to sign and I kept it a couple days and I thought about it and I handed it back to him, and I told him "I think you might need it more than I would."

Q. So there was no one that actually handed you a card that was in the position of representing the union A. Benny give me the card, yes.

Q. That said anything to you regarding the fear of the assessment? A. No.

Mr. Solner: I have no other questions.

[32] Mr. O'Leary: I have no questions.

Hearing Officer: You are excused.

(Witness excused.)

JOHN HAUSER

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

Hearing Officer: State your name?

Witness: John Hauser.

Direct Examination

Q. (By Mr. Solner) Where do you live, Mr. Hauser?

Mr. O'Leary: Just a minute. I didn't get the name.

Witness: John Hauser.

Mr. O'Leary: How do you spell the last name?

Witness: H-a-u-s-e-r.

Q. (By Mr. Solner) Where do you live, Mr. Hauser? A. Sterling Heights, the address?

Q. Would you give it to us? A. 34585 Koch.

Q. Where are you employed? A. Savair Manufacturing Company.

Q. How long have you been employed by Savair? A. Approximately five years.

Q. Where are you presently located? A. On Warren.

Q. You are presently at the Gibson plant? [33] A. Gibson plant, Warren.

Q. Were you located at the Charlevoix plant? A. Yes.

Q. When did you move to the Gibson plant? A. Approximately a month ago.

Q. While you were at the Charlevoix plant were you approached by anyone regarding solicitation of cards for the union? A. Yes, I was.

Q. Who approached you with the cards? A. Benny McKnight.

Q. At the time he approached you with these cards did you have any discussion with him regarding the assessment of a fee or initiation fee? A. With Benny, no I didn't.

Q. Did you have any conversation with anyone that passed the card out to you or anyone that was representing the union regarding the assessment of a fee? A. No.

Q. The payment of an assessment? A. No.

Q. Did you attend any of the meetings that the union called? A. Yes, one meeting I attended.

Q. At that meeting was there a discussion from anyone here representing the union? A. Yes, there was.

[34] Q. Regarding the fee or assessment? A. Yes, there was. Mr. Smith said under no circumstances would they want the union in the place if there was an assessment or something hanging over peoples' heads like that to persuade their vote in any way.

Q. This meeting was subsequent to the election or before the election? A. This was after the election.

Q. How did this conversation come about by Mr. Smith this statement if you know? A. Mr. Smith had a letter there I guess from the NLRB whoever it was and they were going over this thing with the fellows.

Q. Did anybody ask Mr. Smith a specific question with regard to the assessment or the fee that they had been told about? A. I imagine they did.

Mr. O'Leary: Just a minute.

Mr. Solner: I have to know what you heard. That's what I want you to tell the Examiner, specifically what you heard.

Q. (By Mr. Solner) He wants to know what was said? A. All I heard was Mr. Smith say that they wouldn't want the union in the place under those circumstances if there was an assessment over their head or people had to pay to join the union or to persuade their vote in any way, that's what I heard.

Q. Did you hear any conversation by someone asking Mr. Smith a question that he was replying to? [35] A. No.

Q. You didn't attend any of the meetings prior to the election? A. No.

Q. And you did turn your card in to McKnight? A. Yes, I did.

Q. And you had no conversation with McKnight regarding the card or the assessment?

Mr. O'Leary: You have asked that question about four times. I will object to it.

Witness: Benny gave me about three cards and I finally signed one. And the only time I did sign that one was because I had a conversation with Don Bridgeman. At that time he said there was going to be an assessment, you know, and how it was going to be—

Mr. O'Leary: Objection. He is not answering the question.

Hearing Officer: Who said that?

Witness: I am just saying it the best way I can.

Hearing Officer: Please, no discussion.

Witness: I can't give you yes or no. I gotta give you the best answer I can.

Hearing Officer: I said no discussions, please. Are you talking about what Mr. Bridgeman said or what Mr. McKnight said?

Witness: Okay. Go back a minute.

Hearing Officer: Now that answer you just gave related to what Mr. Bridgeman said?

[36] Witness: Yes.

Hearing Officer: He is another employee?

Witness: Yes.

Q. (By Mr. Solner) It was nothing that related to what Mr. McKnight said? A. No sir.

Mr. Solner: I have no further questions.

Mr. O'Leary: No questions.

Hearing Officer: You are excused.

(Witness Excused.)

THOMAS RICE

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

Mr. O'Leary: What is the full name again?
Witness: Thomas Rice.
Mr. O'Leary: R-i-c-e?
Witness: Yes.

Direct Examination

Q. (By Mr. Solner) Where do you live, Mr. Rice? A. I live at 30644 Normal in Roseville.

Q. Where are you employed? A. Savair Manufacturing.

Q. How long have you been employed by Savair? A. A little over five years.

Q. You are presently working in the Gibson plant? [37] A. Yes sir.

Q. Did you work in the Charlevoix plant before? A. Yes sir.

Q. When did you move to the Gibson plant? A. I think it was roughly three weeks ago.

Q. At the time you were in the Charlevoix plant were you approached by anyone regarding the signing of cards for the union? A. Yes.

Q. Who were you approached by? A. Benny McKnight.

Q. Did you ever have any conversations with Mr. McKnight regarding the signing of the card? A. I just told him I wouldn't sign it and he said it was a possibility you would get fined if you wouldn't. I said well what would be the fine and what have you, and he said there was nothing set up how much it would be. I held out til almost the last day or so before I did sign it.

Q. Did you have any conversations with either of these gentlemen or anyone else from the union regarding the cards? A. No sir, I did not.

Q. Or regarding the election? A. No.

* * * *

[40] *Redirect Examination by Mr. Solner*

* * * *

[41] Q. And you didn't have any conversations with anybody other than Benny McKnight regarding those cards? A. No.

* * * *

[42] Hearing Officer: When you talked to Benny McKnight you testified that he said if you didn't sign the cards possibly you may be fined. Did he say anything more?

Witness: No. Actually I heard—

Hearing Officer: No, no. I want to know what you heard Benny McKnight say.

Witness: All he said was that if you didn't sign the card if the union did get voted in you would be fined.

Hearing Officer: You would or you might be fined?

Witness: He said you would.

Hearing Officer: Did he explain that at all?

Witness: No sir, he didn't. I asked him what he meant. I said "what do you mean by being fined?" He said if you didn't sign the card and the union was voted in you would be fined.

Hearing Officer: And he didn't explain it?

Witness: He didn't say how much of what or why.

Hearing Officer: Okay.

Recross-Examination

Q. (By Mr. O'Leary) Benny McKnight is a fellow employee, is that right? A. Yes, he is.

Q. Benny McKnight asked you to sign it? A. He handed me a card.

Hearing Officer: Did you observe him handing other employees cards?

[43] Witness: Yes, I did.

Hearing Officer: Are you aware of anybody else that handed out cards other than Benny McKnight?

Witness: No sir, I am not.

Hearing Officer: How many employees approximately are there in the shop, forty?

Witness: Roughly right now, yes.

Redirect Examination

Q. (By Mr. Solner) This statement that Mr. McKnight said regarding the fine did that influence your signing a card or not? A. Yes, it most certainly did.

Mr. Solner: I have no further questions.

Hearing Officer: Did Mr. Smith or any other representative of the union say anything to you or other employees about Mr. McKnight organizing?

Witness: We all knew that Mr. McKnight was organizing it.

Hearing Officer: Handing out cards?

Witness: Yes sir, and he talked to a lot of us. It more or less consisted of we need the union.

Hearing Officer: Did you ever hear Mr. Smith or any other representative of the union say anything about Benny McKnight working for the union trying to get the union in?

Witness: No sir, they never said anything to me of it.

Hearing Officer: In other words, that you should give your card to Benny McKnight?

[44] Witness: No sir. But he told us when he handed the cards out to please fill them out and give them back to him and he would turn or mail them in to the union.

Hearing Officer: You attended a meeting where I think you said Mr. Smith talked. Was Mr. Benny McKnight at that meeting?

Witness: Yes sir, he was.

Hearing Officer: Did Mr. Smith speak from a platform or rostrum or anything?

Witness: Just more or less like where he is now.

Hearing Officer: He sat at a table?

Witness: Yes.

Hearing Officer: Where was Mr. McKnight at the meeting?

Witness: He was about three seats or two seats in front of me.

Hearing Officer: He didn't sit with Mr. Smith?

Witness: No sir, he didn't.

Hearing Officer: Did Mr. McKnight speak at the meeting?

Witness: No.

Hearing Officer: Did he speak at any other meeting with Mr. Smith present?

Witness: To my knowledge, no.

Q. (By Mr. Solner) That is the only meeting you attended? A. Yes.

Hearing Officer: Anything further?

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[45] *Redirect Examination*

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Q. (By Mr. Solner) Did you see Mr. McKnight talking to Mr. Smith or Mr. Plake? A. The only thing I can tell you on that I know he made some phone calls, but if it was the union I don't know.

Hearing Officer: You don't know?

Witness: No, I don't.

Q. (By Mr. Solner) Did you ever have any contact with anybody other than Mr. McKnight regarding this union? [46] A. No sir, I was never approached by anyone.

Q. He is the only one that you ever had any contact with? A. Besides the fellows in the shop talking, but he is the only one.

Q. That would be a union representative? A. That approached me.

Q. You never had Mr. Smith there in the plant and have him talk to you? A. No sir.

Q. Nor anyone else from the union come and talk to you? A. No sir.

Q. He was the only one? A. Yes sir.

Q. So he was the only one that you would rely on to be the spokesman for the union? A. Yes.

* * * *

RAYMOND E. NECK

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

[47] Hearing Officer: Be seated and state your name for the record.

Witness: Raymond E. Neck.
Hearing Officer: Spell the last name.
Witness: N-e-c-k.
Hearing Officer: Sit down.

Direct Examination

Q. (By Mr. Solner) Where do you live, Mr. Neck? A. Harper Woods.

Q. Could you give the address? A. 20325 Woodland, Harper Woods.

Q. By whom are you employed? A. Savair Manufacturing.

Q. How long have you been employed by Savair Manufacturing? A. Approximately three years.

Q. What is your position with Savair? A. Manufacturing engineer.

Mr. O'Leary: I didn't hear the answer.

Witness: Manufacturing engineer.

Q. (By Mr. Solner) How long have you been employed as manufacturing engineer for Savair? A. Approximately three years.

Q. For the total time that you have been employed by them? A. Yes.

Q. Were you asked by the company to be an observer at the time [48] of the election? A. Yes, I was.

Q. Did you act in that capacity? A. Yes, I did.

Q. Where did you act in that capacity? A. 10900 Charlevoix.

Q. Who was the other observer if you recall? A. Ben McKnight.

Q. He was the union observer? A. The union man.

Q. Do you recall the name of the NLRB representative who was down at the Charlevoix plant? A. Joe Bolton.

Q. Mr. Bolton? A. Yes.

Q. How did you get to the Charlevoix plant that day? A. I rode over with Mr. Bolton.

Q. Was anyone else in the car? A. A union representative.

Q. Do you know who that union representative was? A. I don't recall his name.

Q. Would it be Mr. Smith by chance? A. Yes, I believe.

Q. So the two of you and Mr. Bolton rode together over to the Charlevoix plant? [49] A. Yes.

Q. In the car on the way over there did you have any conversation regarding your duties as an observer? A. Not to any extent that I can recall. I was basically tied up giving direction to Mr. Bolton how to get over to Charlevoix.

Q. You didn't discuss what your duties and responsibilities were? A. No.

Q. After you arrived at the plant did you then proceed to set up a booth? A. Mr. Bolton at that time gave directions.

Q. To you and to Mr. Smith? A. No, Mr. Smith was not on the premises at that time.

Q. He stayed in the office or someplace? A. Outside the plant.

Q. And Mr. McKnight was present with you and Mr. Bolton, is that correct? A. That is correct.

Q. What did Mr. Bolton do at the time of setting this up or say to you specifically? A. He was going through the procedure explaining how the booth operated and let us go through it, that there was nothing in the booth. He explained the procedure how the men was going to vote, how he was going to fold and place his ballot and give us the directions to mark the employee's name off if he comes up and identifies himself, and to challenge his vote if there was [50] any reason to do so.

Q. That was to challenge his right to vote if you had a reason to challenge? A. If we had a reason.

Q. Mainly you were there to observe the employees and make sure they were employees before they voted, is that what he basically told you? A. Yes.

Q. Did he say anything about your talking to any of the other men? A. We weren't to communicate. We had to stay right at the poll booth and we weren't permitted to roam through the plant or communicate any way.

Q. You were not to talk to them at all? A. No.

Q. How about the men as they came up to vote? A. No.

Q. You were not to talk to anyone but to him, is that right? A. Yes.

Q. And that was only in the area of objections to the right to a man to vote? A. Yes.

Q. Do you know Willie Stafford, S-t-a-f-f-o-r-d? A. Yes.

Q. Did you see Willie vote on that day? [51] A. Yes, I did.

Q. When the polls opened did Mr. Bolton make some sign or did he tell the men that the polls were open they could vote? A. Yes, he did.

Q. How did he do that? A. Since the plant was of the size that he could by open voice, there was no speaking or anything, just by voice "the voting will start within five minutes" and when the five minutes was up he said "voting is open for the next thirty minutes".

Q. Did the men come up to vote in a line? A. Yes, some did and some didn't, partial.

Q. Did he explain to them as they came up what to do or what the procedure was? A. To the individuals as an individual came up he explained to them and showed them how to use the ballot. When there was a line he explained it to the first one and he asked the man behind "did you understand the instructions?" He didn't go through the instructions individually with every man.

Q. Tell us exactly what those instructions were? If you recall. A. To the best of my ability to remember he explained that you make a mark in the yes box if you want the union and the no block if you do not. Then you fold your ballot up and place it in the box.

Q. Then he would hand each employee this ballot? A. Yes.

[52] Q. And then they would fold it up and put it in the box? A. Yes.

Q. Did he say anything else to them about assisting them in any way? A. No.

Q. All he told them was mark it yes or no and fold it and put it back and then he said that to a line of men? A. If there was a line, yes.

Q. He didn't ask each one of them the same question? A. He asked them if they understood and if they didn't he would reexplain to certain individuals.

Q. Did you see Willie vote, Willie Stafford vote? A. I see him enter the booth.

Q. Was he with himself when he walked up there? A. He was in line.

Q. Do you know whether the NLRB representative give him any specific instructions? A. No, outside of asking do you understand the instructions.

Q. What was Willie's answer? A. Yes, to the best of my knowledge.

Q. Did you know that Mr. Stafford could not read or write? A. I didn't know to what extent. I do know he is somewhat limited.

Q. You didn't volunteer to help him? A. No, I didn't. [53] Q. Why didn't you? A. I didn't realize that he could be that illiterate that he didn't understand yes and no or to read men or womens restroom or any individual words.

Q. Was there any other reason why you didn't help? A. Basically not.

Q. Did the NLRB man indicate to you not to approach him at that time that you were thinking about this? A. We weren't to approach any employees at any time.

Mr. Solner: I have no further questions.

Cross-Examination

Q. (By Mr. O'Leary) Witness, Mr. Bolton the NLRB man you say he did give Mr. Stafford instructions on how to vote? A. To the group of people. There were a group of men in line.

Q. He was instructing them all as one? A. Yes.

Hearing Officer: How many people were in the line?

Witness: I would say at that time there was approximately six or seven.

Q. (By Mr. O'Leary) Did they all nod they knew? A. No, he asked them individually as they come up to get their ballot if they understood the instructions.

Q. Didn't he ask Mr. Stafford? A. Yes, he did.

Q. What did Mr. Stafford say? [54] A. Yes.
Mr. O'Leary: That's enough, that's all.
Witness: It was really more of a nod of the head than the voice.
Mr. Solner: I have no further questions.
Mr. O'Leary: That's all.
Hearing Officer: You are excused.

(Witness Excused.)

WILLIE A. STAFFORD,

a witness called by and on behalf of Employer, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Solner) Would you state your full name for the record? A. Willie A. Stafford.
Q. Where do you live, Mr. Stafford? A. I live on Greenleaf.
Q. Could you give me the address for the record? A. Roseville, you mean the house address?
Q. Yes. A. 2639.
Q. By whom are you employed? A. Savair.
Q. Savair Manufacturing Company? A. Yes.
[55] Q. How long have you been employed by Savair? A. 10th day of next month I will be there six years.
Q. Were you located in the Charlevoix plant? A. Yes.
Q. Did you transfer from the Charlevoix plant to the Gibson plant? A. Yes.
Q. When were you transferred up to the Gibson plant? A. I don't know exactly, I have been there about four weeks.
Q. Did you vote in the election at the Charlevoix plant for this union? A. Yeah.
Q. On that day in particular that this election was held do you recall who was at the voting booth when you went up there? A. Ray was there. I don't know.
Q. There were two other fellows? A. I don't remember.

Q. Was Benny McKnight one of them? A. I believe he was.

Q. And Mr. Neck? A. I don't know Mr. Neck.

Q. Raymond Neck? A. Oh yeah, he was there.

Q. And the third man was a man from the NLRB, the National Labor Relations Board, the other man was the man conducting the [56] election? A. I don't know the man.

Q. But there was a third man there? A. Yes.

Q. At the time that you went up to vote did you go up alone? A. Yeah.

Q. At the time that you walked up to the booth to vote did this man, this third man there, did he explain to you how to vote this ballot? A. I don't remember whether he did or not. I couldn't understand. I think he was trying to tell me but I didn't understand.

Q. Did he indicate to you that you could vote on the right or the left, if you wanted the union to vote on the right and if you don't want the union to vote on the left? A. I don't remember him saying that to me.

Q. He handed you a ballot and told you to go into the booth? A. Yes.

Q. And come back out and stick it in the box, is that correct? A. Yes.

Q. When he handed you the ballot was it folded? A. Yes.

Q. When you went into the booth did you vote. A. I didn't, I just marked on the paper. I can't read, I didn't unfold it. I didn't want the union.

Q. We don't want that we just want— [57] A. I couldn't read. I just marked on it and stuck it in the box.

Q. Did you mark it on the righthand corner? A. No.

Hearing Officer: Did you open the ballot?

Witness: No sir.

Hearing Officer: He gave you a folded ballot?

Witness: Yes.

Hearing Officer: And you marked on top of the folded ballot without opening it?

Witness: I didn't open it. I just marked it and put it in the box.

Q. (By Mr. Solner) But you did this in furtherance of his instructions to mark it in the corner the right or the left?

Hearing Officer: You have to speak and not shake your head so she can put it down.

Witness: I didn't understand say that again.

Q. (By Mr. Solner) When you came up there and he gave you a ballot and he said you mark on the right no and on the left yes and he handed it to you.

Witness: I don't remember him saying that. It was folded I don't remember him saying that.

Q. (By Mr. Solner) And all you did was mark on the outside of the ballot? A. Yes.

[58] Mr. Solner: I have no further questions.

Cross-Examination

Q. (By Mr. O'Leary) Did you tell Mr. Bolton that you couldn't read or write? A. I don't remember whether I did or not. I don't know.

Q. Were there other people there that he was instructing when you were there? A. Oh yeah.

Q. Did you listen to him give them instructions? A. No.

Q. You weren't listening? A. No. I wasn't interested.

Q. When it came your turn what did he do, hand you the ballot? A. Oh yeah.

Q. Did he say on the left? A. I don't remember him saying.

Q. You don't remember him saying? A. No.

Q. But you say—would you say he didn't instruct you how to vote? A. He was talking about how to vote but I wasn't listening.

Q. He was talking about how to vote but you wouldn't listen? A. I wasn't paying no attention.

Q. In other words, you ignored him? A. That's right.

[59] Q. And you went into the voting booth by yourself? A. Yes.

Q. And you made a mark on the ballot you said? A. Yes.

Mr. O'Leary: No further questions.

Redirect Examination

Q. (By Mr. Solner) Was the only reason you ignored him— A. I didn't want the election. I didn't want the union.

Q. Wasn't it a fact too you can't read or write? A. No, I can't read or write.

Q. So even if you opened it it wouldn't have made any difference A. I wouldn't knowed anymore about it if I had opened it up.

Q. Did you fill out a card for the union? A. I didn't.

Q. But there was a card filled out for you, is that correct? A. Yes.

Q. Who filled that card out for you? A. Benny Night.

Q. Mr. McKnight filled out the card for you? A. Yes.

Q. He signed your name to the card? A. Yes.

Q. He knew you couldn't read or write? A. I told him rather than pay you can fill it out for me if you want to, I can't read or write. I don't want the union but [60] I don't want to pay if it comes in.

Q. Did he tell you that you would be fined and so forth? A. I don't know whether he did or not. There was a lot of them talking to me. I couldn't say no certain one.

Q. But you had him fill it out? A. Yeah, he filled it out.

Q. And he knew you couldn't read or write? A. Yeah.

Q. Was he there at the time of the election when you were going to vote? A. Oh yeah.

Q. And he was an observer of the union? And you have voiced an opinion of how you were going to vote before it started? A. I didn't understand it.

Q. You told him you weren't going to vote for the union before this time? A. Oh yeah, I didn't vote for the union.

Mr. Solner: I have no further questions.

Mr. O'Leary: No further questions.

Hearing Officer: Can you recognize the words yes and no?

Witness: I don't think so.

Hearing Officer: Anything further? If there is nothing further you are excused.

Mr. O'Leary: Just a minute.

[61] *Recross-Examination*

Q. (By Mr. O'Leary) Do you drive a car? A. No.

Mr. Solner: Step down.

(Witness Excused.)

Mr. Solner: We have no further factual evidence to present at this time.

Hearing Officer: Mr. O'Leary, do you have any testimony you wish to put into the record?

Mr. O'Leary: Yes, we do.

Hearing Officer: Are you prepared now or do you want a break? Would you like a couple minutes?

Mr. O'Leary: Maybe give us five minutes.

Hearing Officer: All right, we will take a five minute break.

(Recess.)

Hearing Officer: Let's go on the record. Mr. Solner?

Mr. Solner: I would like to recall one witness for purposes of clarification on certain statements that were made on the record.

Hearing Officer: Which witness is that?

Mr. Solner: Don Bridgeman.

Mr. O'Leary: I am going to object. They have had a chance to talk this over and discuss it.

Hearing Officer: I think they will be subject to your cross-examination. [62] You can bring that out if they conversed with other employees in the recess. If they have I will take that into consideration in evaluating the testimony. I will permit recall of the witness.

Mr. Solner: Mr. Bridgeman, you are still sworn. Will you take the stand?

DONALD BRIDGEMAN,

a witness recalled by and on behalf of Employer, having been previously sworn was examined and testified further as follows:

Redirect Examination Continued

Q. (By Mr. Solner) In your contact with Benny McKnight did you have your self any direct contact with Mr. Smith or Mr. Plake in the union yourself? A. No.

Q. Your only contact with anyone representing the union or passing out the cards was Mr. McKnight? A. Yes.

Q. When this problem came up, this assessment, you were talking to Mr. McKnight about it? A. Yes.

Q. Did you ask Mr. McKnight to check this out? A. Yes.

Q. To your knowledge did he check it out? A. Yes.

Q. How did you find out he did check it out? [63] A. When this was going around the guys were leery because they didn't know how much money it would be if any, you know. So I put forth the question to Mr. McKnight is this true. Benny says "I will check this out" he says "I will call tonight Mr. Smith".

Hearing Officer: Just a minute. You said is this true. What did you ask him is true?

Witness: If there would be a fine for not signing the card if the union came in.

Hearing Officer: All right, then Mr. McKnight said what?

Witness: He would check it out for us and let us know.

Hearing Officer: Did he say with whom he would check?

Witness: Yes, he did.

Hearing Officer: What did he say?

Witness: Mr. Smith. In fact—

Q. (By Mr. Solner) What did he say the next day? A. Yes, there would be.

Q. Did he tell you anything else? Did he check with Mr. Smith? A. As far as my knowledge to what Benny and I talked about, yes, he did.

Hearing Officer: Is this what Benny said?

Witness: Yes, and that he would also if there was any other questions that we had he said we could call Mr. Smith and that Mr. Smith would clarify it for us.

Hearing Officer: When did this conversation occur?

Witness: At the time they was giving out the tickets to [64] sign for recognition.

Hearing Officer: In relation to the meetings that were held with Mr. Smith.

Witness: Before we had the first meeting. We never had an actual meeting until the first meeting. This was all in the process of organizing.

Hearing Officer: Do you know when the petition was filed?

Witness: Yes, it was filed when Benny got enough signatures for the union to come down there then he was going to turn them in.

Hearing Officer: You do know when the petition was filed in this case with the Labor Board? I am trying to have you reference this to some point in time. The petition was filed August 12. Was this before August 12 that you had this conversation?

Witness: Sure, it was before that. It was before because—

Hearing Officer: You are certain of that?

Witness: Yes, because I know when Benny got enough tickets he would tell us how many tickets he had, like fourteen today or fifteen tomorrow. When he got enough signatures then he was gonna when everybody got the cards back if he got enough he was going to turn them in. He said he would mail them in.

Hearing Officer: Did you have any conversations with Benny after the petition was filed?

Witness: He said he mailed them in.

[65] Hearing Officer: After he mailed the cards in and after August 12 did Benny go around trying to get more cards?

Witness: Yes, he did. I believe he collected some. Now wait a minute. He collected some cards and in fact they still accepted I think one card after—they might have even gotten Sherman's card after that.

Hearing Officer: Did Benny ask the employees to sign cards after August 12? After August 12 did you hear him say anything about fines?

Witness: After that date?

Hearing Officer: Yes, did you hear Benny say anything about fines after August 12, on or after August 12?

Witness: After they filed for recognition?

Hearing Officer: Yes.

Witness: Yeah, it was like a joke in some respects to some people because they knew that some of the older men that were against it didn't sign and they really ribbed them. They stuck it to them because if the union gets in when the election comes up now that all the tickets are sent in, you know.

Hearing Officer: Yeah.

Witness: They are really going to sock it to you. I made the remarks myself, in fact so had everybody else, you know.

Hearing Officer: In the shop?

Witness: At certain times in there.

Hearing Officer: This is in the shop you are talking about?

[66] Witness: Yes. In fact there sits a man that got mad at me right there for the same thing, right there.

Hearing Officer: I am not interested in that. I am interested in what Benny said about the fine after August 12.

Witness: No specific amount that I can recall.

Hearing Officer: Did he say anything about a fine after August 12?

Witness: Yeah. There was no reason not to.

Hearing Officer: I don't want the reason for it, I just want to know. I want to know when and where and what Benny said about a fine after August 12. You already told us what he said before.

Witness: They hoped that they would get a good one. He hopes that the guys that didn't sign the cards and turn them in would get a good stiff fine.

Hearing Officer: Who did he say this to?

Witness: Him and I were talking.

Hearing Officer: To you?

Witness: Yes.

Hearing Officer: Do you know when?

Witness: After the tickets were signed.

Hearing Officer: After August 12?

Witness: Sure.

Hearing Officer: Do you know how many days or weeks after? Can you fix it in relation to—

[67] Witness: Within a few days after, a week maybe afterwards. It was an everyday occurrence.

Hearing Officer: How can you be certain as to when the petition was filed?

Witness: I knew when it was. When it was mailed. I knew when the signature went in the mail from Benny McKnight because he told me when he mailed them.

Hearing Officer: He told you when the petition was filed with the Labor Board?

Witness: He told me when he got all the signatures back that he had mailed them that he was going to mail them.

Hearing Officer: Yes.

Witness: The next day I asked him "did you mail them?" and he says "yeah, I mailed them, it is all taken care of".

Hearing Officer: To the union?

Witness: He told us how many cards he had at that time.

Hearing Officer: He told you that he mailed it to the union or did he tell you that the union mailed it to the Labor Board?

Witness: He said that they were mailed in and whoever was supposed to get them that they were mailed. Let's see did he say the Labor Board or did he say the union? Anyway the proper people that was to get them got them. They were going in the mail.

Hearing Officer: What I am getting at is can you tell me with any certainty that any of these conversations occurred [68] after August 12?

Witness: Yes.

Hearing Officer: You are relying on when Benny mailed them in. Do you have any other point of reference? Can you tell me in relation to the election itself how many days or weeks before the election Benny said something about getting a fine?

Witness: After the cards were mailed, I don't know how many days you people take to set this up or they set it up, I don't know.

Hearing Officer: I just want your recollection. Let's say the month of August. You say it happened after August 12. Can you remember whether it was the second or third week or the last week in August you had any conversation with Benny about the fine?

Witness: That has been spoken of until this day. In fact in the factory it is still spoken.

Hearing Officer: In other words, up until the time of the election there was conversation about the fine?

Witness: Sure. If you go over there today you can still find men that will say something if it comes in you will still have to pay an assessment. In fact one said well I would just as soon quit. He is an older man. He said I would just as soon quit. He has got about nine years in. He says I would just as soon give up my job.

Mr. O'Leary: I will object to this.

[69] Hearing Officer: All right, now we will eliminate any reference to what other men in the shop said. I am just interested in what Benny said about a fine.

Witness: That there would be one. If you want an honest answer yes or no, yes, there would be one, because he had checked it out.

Hearing Officer: He said that he had checked it out and you had fixed that as before the cards were sent in.

Witness: That is before the cards were sent in.

Hearing Officer: Benny said to you if you have any question check with Mr. Smith?

Witness: Right.

Hearing Officer: He said there would be a fine but if there is any further question call Mr. Smith?

Witness: Yes, and he gave us his number.

Hearing Officer: His telephone number?

Witness: Yes, they gave the number.

Hearing Officer: When Benny said that was that to you individually or a group of employees, do you remember?

Witness: There was another man also asked Benny if there would be a fine.

Hearing Officer: You were present? Were you present? Did you hear this other man talk to Benny about a fine?

Witness: Yes.

Hearing Officer: That is important. I have to have your [70] direct observations here. You heard another man. Do you remember the other man's name?

Witness: Yes.

Hearing Officer: Who was that?

Witness: You're probably going to laugh and he works in my department, he is my brother, he works in front of me.

Hearing Officer: What is his name?

Witness: Robert Bridgeman.

Hearing Officer: When did this conversation take place?

Witness: Before the cards were turned in.

Hearing Officer: Did you hear your brother and Mr. Bridgeman have a conversation with Benny after the cards were turned in, after August 12 about a fine?

Witness: I wouldn't say it was after on him, no. No, I wouldn't. I wouldn't give you a straight definite answer. But Benny definitely told me that there would be a fine and he checked it out.

Hearing Officer: I am interested also after August 12 did he repeat that?

Witness: I would say this much, that I know that there was some man that went up. We thought it was the last day when Benny took the tickets he was gonna mail them and I think some of these guys got a little leery and they did go ahead and take another ticket and sign it and turn it in because they figured out who had the majority.

[71] Mr. O'Leary: I object.

Hearing Officer: This is before August 12. I am interested after August 12 conversations that Benny had or any other representative had about the fine?

Witness: Yes.

Hearing Officer: After August 12.

Witness: Yes.

Hearing Officer: After he checked with Mr. Smith?

Witness: At the meeting it was said.

Hearing Officer: Which meeting?

Witness: The first meeting, that day after recognition went in.

Hearing Officer: What was said at the meeting about that?

Witness: It was brought up would there be an assessment or whatever the people want to call it or classify it a initiation fee or anything like that and there would be a fee. No set figures was put on it.

Hearing Officer: Mr. Smith said there would be a fee?

Witness: Yes sir.

Hearing Officer: Did Mr. Smith say at the meeting that only those persons who failed to sign a card would get an assessment?

Witness: Yes sir.

Hearing Officer: He said that specifically.

Witness: The rest of them that signed the cards and handed [72] them in won't pay anything, but anybody that didn't sign a card would have to pay. When the union came in just say for example they came in and there was a five dollar fee, everybody with the—

Hearing Officer: Was any figure mentioned in that meeting?

Witness: No, sir, Benny didn't even have a set amount. In fact one man got mad and said you should go and find out how much they can charge you.

Hearing Officer: You already told me that you didn't know?

Witness: No sir.

Hearing Officer: Do you know of anybody that called?

Witness: No sir, except Benny to verify that there would be a fine.

Hearing Officer: And this you say occurred before August 12?

Witness: Yes sir, it was in the process of when the tickets were being handed out.

Hearing Officer: Okay, is there anything further? Any further questions?

Mr. Solner: No.

Mr. O'Leary: Yes.

Recross-Examination

Q. (By Mr. O'Leary) What is your brother's position at the plant? A. He works on the machine he is a lathe operator on the tracer.

[73] Q. He is the boss isn't he? A. No sir. Shall we go farther?

Q. I just asked you the one question. Is he a foreman? A. Superintendent.

Q. He is the superintendent? A. But I have two brothers. Bob is a worker and one is a superintendent.

Q. The one you referred to here? A. He was a worker.

Hearing Officer: First name.

Witness: Bob Bridgeman and Carroll Bridgeman is the superintendent. That's why I was clarifying.

Hearing Officer: In the testimony you are talking about Robert Bridgeman?

Witness: Yes, he is a worker.

Q. (By Mr. O'Leary) When he told you to call Mr. Smith himself did you call and try to get Mr. Smith? A. No, I had no reason to call Mr. Smith.

Q. You said that he told you to call Mr. Smith yourself if you want some information. A. Right. He said if you wanted anything clarified or anything that we could call Al Smith.

Q. Did you call him? A. No sir, like I said I had nothing that I should bother the man for.

[74] Q. You said you weren't satisfied in having the understanding of just what it was. Did they classify it as an assessment or was it initiation fee? Did they call it an initiation fee? A. Like I said you could term it for whatever you want.

Hearing Officer: What did Mr. Smith call it at the meeting?

Witness: At the meeting it would be a fee to join.

Hearing Officer: What did he call it, a fee to join, is that what he called it, or did he call it initiation fee? Do you remember his words?

Witness: The question was brought up and it was asked I believe the question that was put to Mr. Smith

was would anybody that didn't sign a card have to pay if the union got in.

Hearing Officer: Have to pay what?

Witness: Money, a fine or assessment.

Hearing Officer: What were the words used in the question? That's what is important if you can remember. If you can't remember tell us.

Witness: He said if the union gets in would the fellows that signed the cards have to pay and those that didn't would they pay. And Mr. Smith said yes the ones that signed the cards and handed them in they wouldn't have to pay anything, but the fellows that didn't sign the card and handed it in when the union comes in they will have to pay to join the union. But you fellows will be eliminated, so one fellow he jumped up and raised his hand and he said I have always belonged [75] to the union. They said well how come you didn't fill out a card. He said I didn't fill out a slip they didn't give me it. He said he was always, well I won't use the word, but he said he was always by the boss. So after the meeting he went up to the table.

Hearing Officer: Did Mr. Smith or anybody say that the money you would pay would depend upon how you voted or did they say depending on whether you signed the card?

Witness: Depending on if you signed the card.

Hearing Officer: There was no qualifications as to how you actually voted?

Witness: No, none I can recall on that.

Hearing Officer: How many parties were present at that meeting?

Witness: Nineteen or twenty.

Hearing Officer: I am sorry, go ahead.

Q. (By Mr. O'Leary) Didn't Mr. Smith at this meeting in trying to clarify this thing tell you that those that did not sign the cards would have to pay an initiation fee? A. They would have to pay, in other words, if that's what you call an initiation fee or if they call it assessment or fine whatever you want to term it I guess, they would be forced to pay money, or else if they didn't—

Q. Did he say how much? A. No specific amount was mentioned. It could have been a nickel.

[76] Q. Didn't he explain that those that signed the card right then and there that they might possibly waive the initiation fee for them? A. If you would sign a card I am almost sure now, he did say this that if you signed a card prior I think it was prior to the election that you would be exempted from paying.

Q. Waive the fee? A. Right, but if—

Redirect Examination

Q. (By Mr. Solner) They never held a meeting until the cards were in and there was an actual petition filed, and you knew there was a petition filed because there was a notice up, is that correct? A. There was a small get together of Benny McKnight and Mr. Smith and a couple other fellows.

Q. Were you present? A. No.

Q. I am talking where you were present. A. It was the first meeting.

Q. That was the notice sent out by the union to you, is that right? A. Right.

Q. What did that notice say, that they had filed a petition or a petition had been filed? A. And that we had a meeting at the VFW Hall at Nine Mile [77] one block or so east of Van Dyke.

Q. In fact wasn't that on August 22, 1970? A. Yes, that was on Saturday morning.

Q. The petition had actually been filed on August 12, two weeks before that and that meeting on the 22nd is the one you are talking about where you heard all this about the assessment and the initiation fee or whatever it was? A. Yes sir.

Q. At that time is when you had this discussion with McKnight regarding the fee or initiation fee or anything of that nature? A. Not at that meeting.

Q. I am talking about around that meeting in the plant when you talked to McKnight. A. When I talked to McKnight was way before that.

Q. Did you talk to McKnight then at that meeting or before that meeting right close to that meeting? I am

trying to pin down in time when you had your conversation with Mr. McKnight regarding the fee? A. It is when he was handing out the tickets.

Q. After all the tickets were out and in, they were all sent in, did you ever have a discussion with Mr. McKnight? A. During work hours, yes, you would say a few words. Break it up again please.

Q. What I am trying to get at so that you can clarify for the court I am trying to determine whether you had a continuous [78] discussion with Mr. McKnight from July until September 22 on the date of the election regarding this fee, this initiation fee or this fine or whatever you want to call it, whether a man would have to pay that fee if he didn't sign a card? If he did sign a card if it was going to be waived? Did you have a discussion with Mr. McKnight from July right through to September 22 and if not when did you have the discussion? I am trying to pinpoint it in time and dates. A. The first time when I talked to Mr. McKnight about it—

Hearing Officer: We have already had that.

Mr. Solner: We can't—

Hearing Officer: He told me on my question to the best of his recollection it was when he had the conversation that appeared to be general. I don't want you to go over that first instance. You definitely fixed that as being before the petition was filed when Mr. McKnight told you to call Mr. Smith.

Witness: Yes.

Hearing Officer: Your counsel is asking now as I have asked you previously do you recall specific instances where Mr. McKnight had a conversation with you where again he referred to a fine or a fee?

Witness: Yes, like I told you, like I said I kidded guys about it.

Hearing Officer: You can't recall specifically the date?

Witness: Not the exact date.

[79] Hearing Officer: What happened or who was present?

Witness: Not the exact date.

Hearing Officer: Specifically?

Witness: No, I can't exactly.

Hearing Officer: Okay. Any further questions?
Mr. Solner: No.

Recross-Examination

Q. (By Mr. O'Leary) Were there signs posted of notice of election before this election in the plant? A. Notice of election?

Q. Yeah, posted in the plant. A. You mean the ballots is that what you are referring to or what?

Q. Notice of election. Notice of the NLRB notice of election? A. Yeah, we had a notice of election.

Q. Were they distributed in the plant? A. They were posted.

Q. Where were they posted? A. It was posted in the lockerroom.

Q. Lockerroom? A. In the lockerroom.

Q. Was it posted in the toilet? A. The toilets are down there but that is also a lockerroom.

Q. Were they posted throughout the plant at all? A. Truthfully I don't recall if there was any upstairs or not.

[80] Mr. Solner: I object to this line of questioning. It is immaterial. There was a notice posted and that is all that is required.

Witness: There was more than one notice.

Mr. Solner: It is not part of these objections.

Mr. O'Leary: Okay, that's all I have.

Hearing Officer: All right, you are excused.

(Witness Excused.)

Hearing Officer: Are you resting now?
Mr. Solner: Yes.

ALFRED SMITH,

a witness called by and on behalf of Petitioner, being first duly sworn, was examined and testified as follows:

Hearing Officer: Be seated.

Direct Examination

Q. (By Mr. O'Leary) What is your full name? A. Alfred Smith, S-m-i-t-h.

Q. Where do you live? A. 6167 Blue Hill, Detroit.

Q. What is your occupation? A. My occupation is National Secretary-Treasurer of the Mechanics Educational Society of America.

Q. Did you participate in organizing the employees at the Savair Manufacturing Company located on 24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix, Detroit, Michigan? [81] A. Yes, I did.

Q. What prompted you to start organizing the employees of this company? A. We were contacted by several employees from the company asking our organization if we would organize them.

Q. Did Orville Plake assist you in this organization? A. Yes, he did after he came back from his vacation.

Q. This is Orville Plake sitting here? A. Yes.

Q. What is Orville Plake's title? A. National Representative of the MESA.

Q. Just what procedure did you take to organize the people? A. I had several group meetings with several of the individuals to begin with, and instructed them in regards to the proper procedures to obtain a National Labor Relations Board election to find whether or not we could have a union in the plant.

Q. Did you tell them what they had to go through to obtain the election? A. Yes, I said they would have to have a majority of cards signed by the individauls in the plant, the amount necessary to petition for an election.

Q. Did you correspond with the employees by mail? A. Yes, I did.

Mr. O'Leary: Mark this as an Exhibit.

[82] (The document referred to was marked Petitioner's Exhibit No. 1 for identification.)

Q. (By Mr. O'Leary) I show you Exhibit marked Petitioner's 1 and ask you if you can identify that? A. Yes, this is a letter sent out generally to those employees who have signed cards instructing them on how to win their election.

Q. Can you tell me when that letter was mailed? A. This particular letter was mailed about the third week of July.

Mr. O'Leary: I would like to read this letter into the record.

Mr. Solner: I would like to voice an objection to introduction of this letter for the reasons that there hasn't been a foundation laid that this was mailed out to any employees. We don't know who it was mailed to.

Witness: I would tell you who it was mailed to if you want to ask the question.

Mr. O'Leary: I have to ask the question.

Q. (By Mr. O'Leary) Who were those letters mailed to? A. This letter was mailed to only those people who signed membership cards.

Q. At that time you mailed that letter would you know approximately how many members had signed cards at that time? A. At that particular time there was about twenty-eight, twenty-eight [83] to thirty.

Q. And that letter went to the twenty-eight members who had signed cards? A. Those were the only ones we had the addresses of so that's the only ones we could sent it to.

Mr. Solner: Again I voice the objection because I am not sure that they received it. If we had some testimony to show that some employees received it, it was actually in fact received by them then I would say it would be introduced. However, it doesn't stop Mr. Smith from reading it into the record.

Hearing Officer: Wait a minute now. You are offering it?

Mr. O'Leary: I am offering it.

Hearing Officer: All right, the objection is overruled and I will receive Petitioner's Exhibit No. 1.

(The document heretofore marked Petitioner's Exhibit No. 1 for identification was received into evidence.)

Mr. O'Leary: Do you want to read it into the record?

Hearing Officer: You are putting it into evidence. There is no point in reading it.

Mr. O'Leary: Okay.

Q. (By Mr. O'Leary) Mr. Smith, did you later file a petition for certification of representation with the NLRB A. Yes, we did.

Q. What was the date of that filing? [84] A. I believe the date on record was September 12. I would have to check.

Hearing Officer: I thought we stipulated it was August 12.

Witness: August 12.

Mr. Solner: It is stipulated.

Hearing Officer: August 12.

Q. (By Mr. O'Leary) Did you have another meeting with the employees right after the filing of the petition for certification? A. We had our first meeting with all of the members who had signed cards in the organization. We sent them letters inviting them to the meeting.

Q. Where did you hold that meeting? A. The first meeting was held in the VHF Hall on Nine Mile Road just east of Van Dyke.

Q. What was the purpose of this meeting at the hall? A. The purpose was to instruct them on union organization, to outline to them the principles and the benefits that could be had by organization, a general explanation of the MESA, AFL-CIO, and a general question and answer period which was observed at the meeting to answer any questions that any individuals may want to ask, both about the union or in regards to how the union would react if an election was won, and how a contract would be set up and so forth, what the contract would contain. They were told that definitely would be whatever was in the contract would [85] be made up by them, that they will be the ones that will decide what they want in the contract and what they didn't want in the contract.

Q. You heard Donald Bridgeman testify about being present at these meetings. At this particular meeting was the question brought up about a initiation fee or assessment as they called it? A. Yes, there was.

Q. Was that in the form of questions by some of the employees? A. One of the members in attendance asked the question about the initiation fee or assessment or fine.

Q. Are there other names that you use for that initiation fee? A. No, initiation fee is standard in our bylaws.

Q. What is that standard fee? A. The standard fee is ten dollars or less. It cannot be more than ten dollars initiation fee.

Q. Will you relate the discussion you had with the members of that fee? A. The individual asked if they would have to pay an initiation fee. I explained to them that when we were organizing members that the initiation fee was waived, that there was no initiation fee. I also explained to them that after the contract was signed in accordance with the by-laws any new members signing up at that time would have to pay the required initiation fee, and of course the dues in accordance with the by-laws.

Q. That was after the contract was signed? [86] A. I also explained to them at the meeting that there was no fines or assessments in the MESA.

Q. Did you have any discussions about those who had signed at that time or who would sign prior to the election as to whether they would be given a waiver of the initiation fee? A. Those signing cards were signing membership cards, and, therefore, were signing membership into the organization. I told them that there would be no initiation fee. Anybody signing up after the contract would be categorized as new members and of course would have to pay the initiation fee as they do in any other organized shop.

Q. You didn't consider that as a penalty of any kind? A. No, none whatever.

* * * *

[88] Q. (By Mr. O'Leary) Did you hold another meeting of members on September 12, 1970? A. A membership meeting, yes, we did.

Q. Where was that held? A. The September 12 one was I believe the September 12 one was at the VFW Hall on Nine Mile. Was it, I am not sure. See we use two halls here.

Q. Was it the George Washington Post Hall on Mt. Elliott? A. Just a moment. Yes, that one was on Mt. Elliott.

Q. What was the purpose of that meeting? [89] A. For the same purpose of explaining the situation and organization and various conditions, and a general question and answer period to clear up any misunderstandings or

any questions that any of the individuals wished to express or wanted cleared up.

* * * *

[93] Q. Mr. Smith, during all these different meetings you had with these employees was there ever any discussion of coercion or inducement on the part of the union? A. Yes, I informed all the members in attendance at the meetings—

Q. Could you tell us what meeting that was at? A. This was at the first meeting and also with our group discussions with individuals in small groups that we wanted no coercion, we only wanted these people to sign up in the organization that wanted to belong to the union; that as far as we were concerned the people in that plant if they didn't want the MESA we didn't want to organize them. As far as we were concerned we wanted people who wanted to be members and wanted a union to further their cause. That definitely was stressed both at the meetings and the individual groups.

We also instructed the people who solicited for cards not to entertain any coercion in the thing because it would cause more hard feelings toward the union than it would do in good.

Hearing Officer: Who were those persons?

[94] Witness: The individuals we talked to, one of they was Benny McKnight and one was, I have a list of the names here, one was Preston Rankin, one was Jack Reibling, one was Alex Ogryski, one was Robert Tuchinski and all the people in attendance at the first meeting.

Hearing Officer: All those persons that you named did all those persons solicit union cards?

Witness: As far as I know.

Hearing Officer: Do you remember how many cards Mr. McKnight solicited? What percentage of the cards?

Witness: Of course he was working in the plant that had the most employees. The other plant had approximately a third of the employees that the Charlevoix plant had. The cards were solicited in both plants. Now the approximate number that each one obtained I have no idea. They were all put into envelopes and mailed to our office.

Hearing Officer: Is that how you received them through the mail?

Witness: Yes.

Q. (By Mr. O'Leary) So there was four or five people besides Benny McKnight in the signing up of members? A. Toward the middle of the organizational drive there were others who I have no knowledge of where cards were given to them to sign up a friend or so forth. So that there may have been several but I have no knowledge.

[95] Q. How many employees did you say there was in the Charlevoix plant? A. I think there was approximately thirty-four or thirty-five.

Q. How many members in the Warren Plant? A. There was eleven until one was discharged, then it become ten.

Q. Benny McKnight was not a paid representative in any way? A. Benny McKnight was not a paid representative, nor was he an official or paid member of the organization. Nobody had paid any dues and nobody had paid any initiation fee.

Mr. O'Leary: Cross-examine.

Cross-Examination

Q. (By Mr. Solner) When did you first meet Mr. McKnight, Mr. Smith? A. I would have to take a check of that. I would say sometime in June.

Q. In June of 1970? A. Right.

Q. How did you meet him? A. I met him by appointment.

Q. Is he related to you? A. No, he is not.

Q. Is he related to anybody in the union to your knowledge? A. Not to my knowledge.

Q. Did he just come in the door or call in? [96] A. As I said there was a group of them that called me on the telephone and wanted to know how to get organized.

* * * *

[99] Q. Which ones did you give cards to? A. I gave cards when we had one group; I gave cards to the group that was there and they were all to use the cards.

I specifically handed the cards—you mean to who I definitely handed them to?

Q. Yes. A. I specifically handed them to Mr. McKnight in one group meeting and they were all to get their cards from Mr. McKnight and they were to contact people in the plant, also other people [100] I gave card to too.

Q. Did you have any contact with anyone in the plant itself regarding a card? Did anybody call you for a card? A. Did anybody call me for a card?

Q. Yes. A. No, not to my knowledge.

Q. How many times were you in the plant before you filed the petition. A. How many times was I in the plant before I filed the petition, I was never in the plant before I filed the petition.

Q. How many meetings did you have with this group of men before you filed the petition? A. Approximately four or five.

Q. You said that at the time they were signing these cards you were handing these cards out to be signed you said that these were cards for individuals to become members of the union and to take care of their initiation fee, is that what you said? A. No, I did not say that. I said these cards were signed for the purposes of membership and to obtain an NLRB election.

Q. Were they in fact a membership card that you were going to allow a man to waive his initiation fee and become a member of the union? Is that the purpose of the card? A. No, that is not the purpose of the card at all. There was no initiation fee applicable to any of the members signing up. There was no initiation fee applicable and they were told [101] that there would be no initiation fee for anybody prior to our signing a contract. After the contract was signed and we then had applications for membership they would come under the by-laws of paying membership fees and dues in accordance with the by-laws as they do in shops that are already organized.

Q. Then in fact that waiver of the initiation fee was contingent on the outcome of the election isn't it? A. Obviously if we didn't win the election there wouldn't be

anything period. But winning the election and getting a contract was a combination of the two. We had to win the election to negotiate a contract. After the contract was signed and those people not wishing membership or not having membership or new employees coming in would apply for membership and they would be charged the standard initiation fee as prescribed by the by-laws.

Q. Let's take a man that signs a card. He signed a card and gave it to you and you told him he would have the initiation fee if you had a contract. Let's suppose you didn't have a contract would you allow that man still to belong to your union and would you still waive his membership fee? A. Repeat that question please? Say that again.

Q. We are talking about initiation fee. What you originally said was that this card was contingent, signing this card and the waiver of initiation was contingent on the outcome of the election. You said that? [102] A. Right.

Q. Now, I ask you if that man signed a card and you lost the election would you still let him become a member of your union and waive his initiation fee? A. Would we still allow him to become a member and waive his initiation fee? Number one, the only ones that we sign up into membership is those that work in shops that are working under a contract, other than new shops that we organize. That is the purpose why we waive initiation fee for the simple reason we have no contract in the shop, we do not charge initiation fee to those people who sign up into membership at that time. If there was a contract developed afterwards then any new people coming there in accordance with the by-laws would pay intiation fee.

Q. Ergo then in fact you automatically make the waiver of the initiation fee contingent on the outcome of the election? A. Right, and the contract.

Q. No one could belong to your union or join your union without a contract then? A. Yes, they can. They can sign up and make application for membership but in order to become full fledged members they have to have a plant to work in. It is presumed they have a plant to work in but everything is predicated upon whether you

win the election or not. If you win the election we can have continuity of dues paying or the application of the by-laws.

[103] Q. Do you have any members in your organization that presently are members of the union but are not working in the shop that has contract? A. Yes, we have, retired members.

Q. They are not on a withdrawal card they are in fact retired? A. They are in effect members in good standing because of their retirement from the shops, yes. But they have been members.

Q. There is no one on active basis as dues paying members that is working in a shop without a contract? A. I didn't quite understand.

Q. You don't have any member who is a dues paying active member who is working in the shop without a contract? A. That is right with the exception of the MESA employees who work for the locals in the union. We are all members but we do not work in the shops.

Q. You actually then had twenty-eight employees signed at the time you filed the petition, is that correct? A. I would have to hazard a guess as to how many we had. I am not sure. The Board has an active record of how many we filed at the time. Since then probably we have accumulated more people who have signed up for membership.

Q. That's what I want to determine for the record, that in effect you said you sent out about thirty-six of the last letter so I am assuming before the election, that between the time of filing the petition and the actual election you acquired an [104] additional seven or eight cards? A. We acquired additional members afterwards, that is right.

Q. And they were also told that it was contingent on the waiver of the initiation fee on the outcome of the election? A. They were told that in organizing new shops we do not charge initiation fee.

Q. But in effect they couldn't be members, therefore, it had to be conditioned on the outcome of the election? A. Not unless Savair Manufacturing was willing to recognize us on the dues question if we didn't win the election.

Q. That wasn't my question. A. That's the only answer I know to your question.

Q. Did Mr. McKnight call you regarding this initiation fee during this period between the time of filing the petition— A. You mean did he ask me that question?

Q. Did he call you on the phone? A. Yes, he did, so did several others.

Q. He had some question down in his mind regarding that? A. He wanted to know the policy.

Hearing Officer: What did he say? Do you remember what he told you?

Witness: Yes, I do know what he told me. He asked me the question as to was there any initiation fee that the members had to pay. I told him that in organizing new shops that the initiation fee was waived and that the only time the initiation [105] fee applied in the MESA was after we had a contract and new members signing up in the plant would then have to pay the initiation fee, the regular initiation fee as the locals charged which is not more than ten dollars by the by-laws; that those were the only ones that would have to pay an initiation fee. That was the policy. So that is the policy in all of our shops even though they have been organized for twenty years. New members signing up or coming to work then become eligible to pay initiation fee but only at one time in the MESA.

Hearing Officer: Did Mr. McKnight or any other employees use the word fine or penalty?

Witness: It was never construed as that.

Hearing Officer: I am not interested in that. I just want to know if they ever used the word fine or penalty, did you ever hear those from any employees in their questions?

Witness: Yes. I heard was there any fines on this and I told them absolutely not, we didn't fine nor did we have any assessment in the history of our organization.

Hearing Officer: At the meeting testified to earlier what were the words fine or penalty present in any of the questions put to you?

Witness: One question at the meeting was asked that these members that weren't signing up now if they could

be fined and I told them no we had no fines or assessments in the MESA, that the only thing they would be applicable to if they signed up [106] after we had a contract in effect and they seek membership in the organization they would then have to pay the regular initiation fee which is standard practice.

Hearing Officer: You told them that?

Witness: Yes.

Hearing Officer: Okay.

Q. (By Mr. Solner) You told those people that inquired? A. I told those people that inquired and they were in attendance of the meetings so the people in the meeting heard the answer.

Q. Wasn't it a fact on the first meeting of the 22nd there was only about fifteen people? A. The first meeting.

Q. On the 22nd? A. No, that is not a fact. There was approximately twenty-three or twenty-four.

Q. How many were at the second meeting in September? Before the election. A. I would say approximately the same amount.

* * * *

[107] Q. (By Mr. Solner) You never picked up any cards then at the plant yourself, they all came through the mail? A. That is right. No, I picked up some from the individuals when we had a meeting but it wasn't at the plant. There was a meeting in a designated place where we met.

Q. This wasn't one of these scheduled meetings where an announcement was sent out? It wasn't the one the 22nd of August? A. We got one member signed up there. As a matter of fact he was quite concerned because he wasn't asked to sign up into membership.

* * * *

Mr. Solner: I have no further questions.

Mr. O'Leary: Will you mark that please?

(The document referred to was marked Petitioner's Exhibit No. 4 for identification.)

Q. (By Mr. O'Leary) Mr. Smith, I show you proposed Exhibit P-4 and ask you if you can identify that?

A. Identify this, yes, this is the constitution of the locals. [108] Q. What page are you looking on there? A. I am loking on Pages 16 and 17.

Q. What does Page 17 refer to? A. I don't know what you—

Q. Is there a chapter on dues? A. Not on this page, no.

Q. Excuse me, it is 21. What does that page refer to in the constitution and by-laws? A. It says Section 1, Article XII, Dues, the monthly dues shall be established by action of the N.A.C. Initiation fee shall be determined by the local executive board but in no case shall the fee be more than ten dollars.

Q. The initiation fee can never be higher than ten dollars? A. That is right, it can be less but not higher.

Mr. O'Leary: I will offer this in evidence.

Hearing Officer: Any objections?

Mr. Solner: No objection.

Hearing Officer: Petitioner's Exhibit 4 is received.

(The document heretofore marked Petitioner's Exhibit No. 4 for identification was received into evidence.)

Mr. O'Leary: That's all.

Hearing Officer: Before you step down did you, Mr. Smith, at any time between the filing of the petition and the election have any information that Mr. McKnight was telling employees that [109] they would be fined in any respect?

Witness: I have no knowledge that Mr. McKnight or anybody was telling them that they would be fined. As a matter of fact the question was clearly put to all concerned who was in contact or conversations with me that there was no fines. The fines as far as I know is a misnomer in some individuals around the plant which we had no control over. We only talked to the initiation fee.

Hearing Officer: Yes, but I am asking you whether you heard anything to the effect that they were using this language?

Witness: Not to my knowledge.

Hearing Officer: When Mr. McKnight called you on the telephone to ask you about the policy with regard to

the initiation fee did you tell him to tell other employees what the union's policy was regarding the initiation fee?

Witness: I told him what the union's policy was and to inform the people as such. I told them at both meetings that there was never an assessment or fine in our organization in regards to this situation of membership.

There has been fines where members have violated and abrogated the by-laws and they of course were fined in accordance with their by-laws and the executive board, making the rulings where they violated the constitution by the situation there which has nothing to do with this whatever.

[110] Hearing Officer: No further questions.

Mr. Solner: Only one question.

Recross-Examination

Q. (By Mr. Solner) Were you asked questions as to how much the initiation fee or fine and assessment was? A. Yes, we were asked the question of what the initiation fee was. We told them in accordance with the by-laws the initiation fee, the maximum initiation fee that can be charged by any local would be ten dollars. The local that they were signing up into membership for was ten dollars.

Q. You told them that at a meeting? A. I told them what the initiation fee was.

Q. Did you tell McKnight it would not be over ten dollars under any circumstances, it would not cost them more than ten dollars? A. I would have told anybody that talked to me because that is the by-laws.

Q. I didn't ask you if you would have I asked you if you did? A. I did.

* * * *

Mr. O'Leary: We rest, Your Honor.

Hearing Officer: No one intends to call Mr. McKnight?

Mr. Solner: We have no rebuttal.

* * * *

[113] Mr. Solner: You can bring down persons that would be pertinent to these objections.

Hearing Officer: As a matter of fact that's why I asked whether Mr. McKnight was going to testify or not.

I will accommodate either party here but I am not going to take the testimony of Mr. Smith as to what somebody else says whether rumors were true or false.

* * * *

[114] Mr. Solner: Yes, I would like to make a statement.

As far as our objections on Objection No. 3 regarding the misrepresentation as to the wage scale comparable to the tool and die shops in the area, we feel now that since the testimony has been elicited that it has been clarified to our satisfaction and we will withdraw that part of it.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 72-1231

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

ORDER ALLOWING CERTIORARI—Filed May 7, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973 [illegible]

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MICHAEL RODAK, JR.

OCTOBER TERM, 1972

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ERWIN N. GRISWOLD,
Solicitor General,
SAMUEL HUNTINGTON,
Assistant to the Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, *infra*, pp. 11–16) is reported at 470 F. 2d 305. The decision and order of the National Labor Relations Board (Pet. App. C, *infra*, pp. 18–29) are reported at 194 NLRB No. 44. The hearing officer's report (Pet. App. D, *infra*, pp. 30–39) and the Board's decision in the related representation case (Pet. App. E, *infra*, pp. 40–42) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. B, *infra*, p. 17) was entered on December 11, 1972. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly concluded that a union's offer to waive initiation fees for all employees who sign union authorization cards before a Board representation election, if the union wins the election, does not tend to interfere with employee free choice in the election.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

> SECTION 8(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).
>
> * * * * *
>
> SECTION 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *
>
> * * * * *

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), * * *

* * * * * *

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. * * * If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

STATEMENT

A. PROCEEDINGS BEFORE THE BOARD

In September 1970, pursuant to a representation petition filed by Mechanics Educational Society of America (the "Union") under Section 9(c)(1) of the National Labor Relations Act, an election by secret ballot was conducted among the production and maintenance employees of the Savair Manufacturing Company (the "Company"). The Union won the election by a vote of 22–20 (App. E, *infra*, p. 40). The Company filed objections to the election, alleging that the Union representatives had improperly coerced

certain employees by leading them to believe that "if they failed or refused to sign a card requesting an election and the union was successful, they would be fined from" $20 to $200 before they could join the union (Pet. App. D, *infra*, p. 30). After an evidentiary hearing, a hearing officer issued a report recommending that the Company's objections be overruled, and that the Union be certified as the employees' representative. The hearing officer found in pertinent part as follows:

Prior to the filing of the representation petition, Bennie McKnight, an active employee-organizer and a Union observer at the election, told employees that, if the Union won the election, they would be subject to an initiation fee or a "fine"[1] if they did not sign an authorization card.[2] When the employees ques-

[1] Two employees, Bridgeman and Rice, testified that McKnight had used the word "fine" (A. 68–69, 83–84). The hearing officer found, however, that Bridgeman's testimony as a whole reflected such a "proclivity to confuse and interchange the characterizations 'fine' with 'initiation fee' [see A. 52–53, 90, 92–93] * * * that there is insufficient evidence based upon Bridgeman's testimony that a threat of a 'fine' occurred either before or after the filing date of the petition" (Pet. App. D, *infra*, p. 34). He further found that McKnight's conversation with Rice occurred before the filing of the petition and was thus irrelevant under the Board's decision in *Goodyear Tire & Rubber Co.*, 138 NLRB 453 (Pet. App. D, *infra*, p. 34).

[2] The card, which was to be used to obtain a Board election, was an application for membership in the Union and also authorized the Union to represent the employee in collective bargaining (A. 101, 104). The Board requires that a representation petition filed by a labor organization be supported by a showing that at least 30 per cent of the employees in the unit have authorized the organization to represent them. 29 C.F.R. 101.17, 101.18.

tioned McKnight about the Union's policy, he told them to call Alfred Smith, the Union's Secretary-Treasurer (Pet. App. D, *infra*, p. 33; A. 51, 55–57, 58, 83–85, 87–91, 94–95[3]). After the representation petition was filed, Smith addressed a group of about 20 employees at an organization meeting. In response to a question about the initiation fee, Smith answered that there was a "small fee,"[4] but that if the Union won the election the initiation fee would be waived for all employees who signed cards before the election[5] (Pet. App. D, *infra*, p. 33; A. 51–52, 57–58, 92–94, 99–101.)

The hearing officer concluded that "what the Union did through Smith and through McKnight was to inform employees that an initiation fee would be waived in the eventuality of a successful election for the Union" (Pet. App. D, *infra*, p. 35).[6] Following the Board's decision in *DIT-MCO, Inc.*, 163 NLRB 1019, that a waiver of initiation fees prior to an election was not an improper inducement to vote for the union, regardless of whether it was contingent upon the results of the election,[7] the hearing officer concluded that

---

[3] "A." refers to the appendix filed in the court of appeals, a copy of which has been lodged with the Clerk of this Court.

[4] The Union's initiation fee is $10 or less (A. 100).

[5] The waiver, however, was not contingent upon how the employee actually voted in the election (A. 93).

[6] He added that whatever confusion may have existed with respect to the terminology utilized by McKnight prior to the filing of the petition (see n. 1, *supra*) was subsequently eliminated by Smith at the organization meeting (Pet. App. D, *infra*, p. 35).

[7] In *DIT-MCO* the Board overruled its earlier decision in *Lobue Bros.*, 109 NLRB 1182, that a waiver of initiation fees, contingent upon the union winning the election, was impermissible.

the Union's waiver offer did not interfere with free choice in the election (Pet. App. D, *infra*, p. 36).

The Company filed exceptions to the hearing officer's report with the Board. The Board sustained the hearing officer's findings and recommendations, and certified the Union as the representative of the Company's employees (Pet. App. E, *infra*, pp. 40–42).

Upon the Company's refusal to bargain, the Union filed an unfair labor practice charge with the Board's General Counsel, who issued a complaint alleging that the Company had violated Sections 8(a)(5) and (1) of the Act (A. 22–27). When the Company's answer (A. 31–33) indicated that it was merely seeking to relitigate issues which had been resolved in the representation proceeding, the General Counsel filed a motion for summary judgment with the Board (A. 34). The Board granted the motion, sustained the allegations of the complaint, and ordered the Company to bargain with the Union, upon request (Pet. App. C, *infra*, pp. 18–29).

B. THE DECISION OF THE COURT OF APPEALS

The court of appeals denied enforcement of the Board's order (Pet. App. A, *infra*, pp. 11–16). The court adhered to its earlier decision in *National Labor Relations Board v. Gilmore Industries*, 341 F. 2d 240, upholding the reasoning of the Board in *Lobue* (see, n. 7, *supra*). The court stated (Pet. App. A, *infra*, p. 15):

> We simply refuse to believe that the waiver of initiation fees, contingent upon the outcome of an election, whether it is referred to as a fine, an assessment, or a waiver of initiation fees, is

not coercive in the context of a union election. The facts of this case indicate that *Lobue* and *Gilmore* are sound decisions, and we conclude that the Board abused its discretion in declining to follow the *Gilmore* decision.

REASONS FOR GRANTING THE WRIT

The decision below that a union's offer to waive initiation fees for employees who sign union authorization cards prior to a Board election is impermissible where it is contingent upon the union's winning the election is erroneous and is in direct conflict with the decisions of other courts of appeals. In these circumstances, and since the issue is a recurrent one in the administration of the Act, review by this Court is warranted.

1. As the court below acknowledged (Pet. App. A, *infra*, p. 15), its holding is in direct conflict with the decision in *National Labor Relations Board* v. *DIT-MCO*, 428 F. 2d 775, 778–779 (C.A. 8), and *National Labor Relations Board* v. *G. K. Turner Associates*, 457 F. 2d 484, 489 (C.A. 9). In *DIT-MCO*, the Eighth Circuit held that the Board had acted "within its discretionary powers to regulate the conditions under which an election may validly be held" in abandoning the distinction, previously drawn in *Lobue*, "between an unconditioned promise to waive union initiation fees for those employees signing cards before the election and a similar promise conditioned, however, upon a union election victory" (428 F. 2d at 779). In *Turner Associates*, the Ninth Circuit agreed with the "*DIT-MCO* court * * * that the Board's new policy was within its discretionary power to regulate election

conduct" (457 F. 2d at 489). The court below, on the other hand, adhered to the view, first expressed in *National Labor Relations Board* v. *Gilmore Industries*, 341 F. 2d 240, that "the waiver of initiation fees, contingent upon the outcome of an election * * * is * * * coercive * * *," and "respectfully decline[d] to follow" the decisions of the Eighth and Ninth Circuits. (Pet. App. A, *infra*, p. 15).[*]

2. "Congress granted the Board a wide discretion to ensure the fair and free choice of bargaining representatives." *National Labor Relations Board* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767. At an early date, the Board recognized that a union's offer to waive initiation fees before a Board election was a legitimate membership-recruiting and campaign technique, which did not interfere with employee free choice in the election. *The Root Dry Goods Co. d/b/a The Root Store*, 88 NLRB 289, 290–291; see also, *The Gruen Watch Co.*, 108 NLRB 610, 612. In *Lobue Bros.*, 109 NLRB 1182, however, the Board held that, where the waiver was conditioned upon the union's success in the election, it would have an impact on employee free choice in the election.

After further reflection, the Board, in *DIT-MCO*, 163 NLRB 1019, concluded that "no real distinction exists between a situation where the union offers to waive or reduce the initiation fees, but nothing is said about the election results, and one where, as in *Lobue*, the waiver is expressly conditioned on the outcome of

[*] The Sixth Circuit has held, however, that a waiver of initiation fees is not coercive where it is not expressly conditioned upon election results. See *National Labor Relations Board* v. *Gafner Automotive & Machine, Inc.*, 400 F. 2d 10, 12.

the election" (*id.* at 1021). The Board noted that, "whether expressly told so or not, an employee must recognize that as a practical matter the waived or reduced initiation fee can become of value to him only if the union wins the election." *DIT-MCO, supra,* 163 NLRB at 1021. Moreover, the Board held that "the *Lobue* theory rests on a faulty premise: that a reduction or waiver of initiation fees, contingent upon the union winning the election, constitutes a promise of benefit which improperly induces or coerces employees to vote for the union" (*ibid.*). The Board explained (*id.* at 1021–1022):

> it is obvious that employees who have received or been promised free memberships will not be required to pay an initiation fee, *whatever the outcome of the vote.* If the union wins the election, there is by postulate no obligation; and if the union loses, *there is still no obligation,* because compulsion to pay an initiation fee arises under the Act only when a union becomes the employees' representative and negotiates a valid union-security agreement.[9] * * *

3. The technique of waiving or offering specially reduced initiation fees during an organizational campaign has traditionally been used by unions to attract new members. The question when that tactic ceases to be permissible and constitutes an interference

[9] In rejecting the Board's *DIT-MCO* holding in this case, the court below assumed that the Board was contending that, "when the Board changed its position from *Lobue* to *DIT-MCO*, it effectively overruled this Court's decision in *Gilmore*" (Pet. App. A, *infra*, p. 13). The Board, however, merely contended that, in the light of the reasons it gave in *DIT-MCO*, the court should reconsider its decision in *Gilmore* and decline to follow it.

with employee free choice in the selection of a representative has been, and continues to be, the subject of much litigation before the Board and the courts of appeals. In addition to the cases cited at pp. 7–8, *supra*, see *DeVilbiss Co.*, 102 NLRB 942; *Otis Elevator Co.*, 114 NLRB 1490, 1493; *A. R. F. Products*, 118 NLRB 1456, 1458–1459; *Weyerhauser Co.*, 146 NLRB 1, 5. See also, *Amalgamated Clothing Workers* v. *National Labor Relations Board*, 345 F. 2d 264, 267–268 (C.A. 2); *National Labor Relations Board* v. *Gorbea*, 328 F. 2d 679 (C.A. 1); *National Labor Relations Board* v. *Crest Leather Mfg. Corp.*, 414 F. 2d 421, 423 (C.A. 5). The decision of the court below creates an uncertainty in this important area which warrants resolution by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 1973.

APPENDIX A

No. 72-1225

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner,* v. SAVAIR MANUFACTURING COMPANY, *Respondent.*	ON APPLICATION for Enforcement of an Order of the National Labor Relations Board.

Decided and Filed December 11, 1972.

Before: CELEBREZZE, PECK and KENT, Circuit Judges.

PECK, Circuit Judge. This case is before the Court upon a petition by the National Labor Relations Board for enforcement of its order issued against the respondent Savair Manufacturing Company. On September 22, 1970, an election by secret ballot was conducted among the Company's production and maintenance employees, which the Union (The Mechanics Educational Society of America) won by a vote of 22 to 20, with one ballot challenged and one ballot declared void. The Company then filed timely objections to conduct which it contended affected the results of the election, alleging, *inter alia*, that the Union deceived employees into believing that they would be fined an unspecified amount if they failed to sign an authorization card and if the Union won the election.

An evidentiary hearing was held before a Hearing Examiner to resolve the issues raised by the Company. In recommending that the Company's objections be overruled, the Hearing Examiner found that there was insufficient evi-

dence upon which to conclude that such a threat occurred either before or after the filing date of the representation petition. He also found that the Union offered to waive the initiation fee for all employees who executed authorization cards prior to the election should the Union win the election, but that this offer of waiver was not objectionable under the Board's policy enunciated in *DIT-MCO*, 163 NLRB 1019, enf'd. *N.L.R.B.* v. *DIT-MCO*, 428 F.2d 775 (8th Cir. 1970). He concluded that the election was not improperly conducted, and that the Union is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The Company's petition for rehearing was denied, and the Board subsequently granted summary judgment against the Company and ordered it to bargain with the Union. The Company has refused to do so, and the Board has brought this petition for enforcement of its order.

In *Lobue Bros.*, 109 NLRB 1182 (1954), the Board held that a pre-election offer of reduced initiation fees is objectionable when the promised benefit is contingent on how the employees voted in the election or on the results of the election. In *N.L.R.B.* v. *Gilmore Industries*, 341 F.2d 240 (6th Cir. 1965), this Court adopted the reasoning of the Board in *Lobue* and held that the economic inducement offered by a union in waiving initiation fees for those employees who sign authorization cards if the union wins the election impeded a reasoned choice because, under the circumstances of that case, the employees had been led to believe that they were receiving an economic benefit far greater than was actually the case. (See also *N.L.R.B.* v. *Gafner Automotive and Machine, Inc.*, 400 F.2d 10 (6th Cir. 1968).)

In *DIT-MCO*, *supra*, the Board changed its policy, overruled *Lobue*, and held that an offer to waive initiation fees for those who sign authorization cards prior to an election is permissible whether or not it is conditioned upon the outcome of the election. The Eighth Circuit enforced the Board's order and held that the Board's new policy of not setting

aside an election when a waiver or provisional waiver of union initiation fees, whether contingent upon the results of an election or not, was within the Board's discretionary powers to regulate the conditions under which an election may validly be held. 428 F.2d at 779.

In response to the Board's petition to enforce its order, the Company relies upon this Court's decision in *Gilmore*. The Board contends that the *Gilmore* case is no longer viable because in that case the court relied upon *Lobue*, which has since been re-examined and overruled by the Board. In presenting this argument, the Board displays a misunderstanding of the relationship which exists between the Board and this Court. The Board's actions are premised upon the assumption that when the Board changed its position from *Lobue* to *DIT-MCO*, it effectively overruled this Court's decision in *Gilmore*, and that this Court must follow the Board's lead and alter its decision in *Gilmore* accordingly. Such is not the case, and we find no reason, either procedurally or substantively, to alter our decision in *Gilmore*.

We note that while there is no question of fact concerning the offer to waive the initiation fees contingent upon the Union's victory in the election, there was some controversy as to whether or not this procedure was represented to the employees in terms of a "fine." The Hearing Examiner's findings on this issue indicate the confusion concerning initiation fees, fines and assessments that can be generated in the minds of those involved in a Union election:

> "According to the uncontradicted testimony of Bridgeman, it appears that McKnight, in obtaining signatures from employees of union membership and authorization cards, told employees that they would be subject to a fine or an assessment fee if they did not sign the card in the eventuality that the union won the election. There was, therefore, a great deal of discussion among the employees as to whether they should sign the union authorization and membership card in view of the fact

that regardless of their desires and how they would actually vote, they could save themselves some money in the event the union were successful. No specific amount was mentioned. Bridgeman used the word 'fine' interchangeably with 'assessment' and 'initiation fee.' His testimony is not entirely clear that McKnight used the word 'fine'. In any event, prior to the filing of the petition, because of the questions raised by employees, according to Bridgeman, McKnight telephoned Smith to find out what the union's policy was. The next day, employees asked McKnight whether it were true that they would have to pay a 'fine', McKnight answered in the affirmative and said that the employees could call Mr. Smith if they so desire and he gave them the telephone number. Subsequent to the filing of the petition, an employee meeting was held at a rented hall under the supervision of Mr. Smith at which approximately 20 employees were in attendance. According to Bridgeman, at the meeting the benefits of unionization were discussed and questions were invited from the floor. An employee asked Mr. Smith: . . . if there was a fee, not fine, we can't call it a fine, to join, and an initiation fee.' And: 'If there was a fee, you know if you didn't sign the slip [union authorization and membership card] and it was, in turn, [sic.] in before the election. There is a small fee, it was never stipulated what amount the fee should be.' According to Bridgeman, Smith answered: 'There would be a small fee.' No amount, according to Bridgeman, was ever specified. Bridgeman further testified that subsequent to that meeting, and prior to the election, Bennie McKnight told employees that if they signed the union membership and authorization card before the election, there would be no union 'initiation fee' if the union were successful at the election. Bridgeman was recalled to the stand twice. The second time he was recalled, he testified that McKnight referred to a 'fine' after the filing of the petition but was unable to specify the circumstances such as the contexts of the conversations and when and where they occurred. Under

these circumstances and because of his proclivity to confuse and interchange the characterizations 'fine' with 'initiation fee', it is my finding that there is insufficient evidence based upon Bridgeman's testimony that a threat of a 'fine' occurred either before or after the filing date of the petition. Upon cross-examination, Bridgeman conceded that what Smith said at the meeting was that an initiation fee would be waived for all card signers who executed their cards before the election in the eventuality that the union won the election."

As indicated by the Hearing Examiner's report, most of the facts concerning the misrepresentation to the employees were not considered by the Board because this conduct occurred prior to the filing of the petition, and the Board has determined that conduct occurring prior to the filing of a petition will not be grounds for setting aside an election. *Goodyear Tire and Rubber Co.*, 138 N.L.R.B. 453 (1962). We do not reach an examination of this policy because we do not agree with the Board that *Gilmore* should be overruled. We simply refuse to believe that the waiver of initiation fees, contingent upon the outcome of an election, whether it is referred to as a fine, an assessment, or a waiver of initiation fees, is not coercive in the context of a union election.

The facts of this case indicate that *Lobue* and *Gilmore* are sound decisions, and we conclude that the Board abused its discretion in declining to follow the *Gilmore* decision. Accordingly, upon a consideration of the arguments presented by both sides to this petition for enforcement, we respectfully decline to follow the Eighth Circuit (*N.L.R.B.* v. *DIT-MCO, supra*), and the Ninth Circuit (*N.L.R.B.* v. *C. K. Turner Associates*, 457 F.2d 484 (9th Cir. 1972)), noting that in neither of these cases was the Court called upon to overrule a controlling precedent of its own.

We have considered the other two arguments which the respondent has presented to this Court, and we conclude that they are without merit. The record indicates that the Board's

conclusion that a full and fair hearing was provided to the Company, and its conclusion that an illiterate employee was not precluded from casting a valid vote by the actions of the NLRB representative at the election are supported by substantial evidence on the record as a whole.

Enforcement of the Board's order is denied.

APPENDIX B

United States Court of Appeals for the Sixth Circuit

No. 72-1225

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY, RESPONDENT

ORDER

[Filed December 11, 1972]

Before CELEBREZZE, PECK, and KENT, *Circuit Judges.*

On petition to enforce an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by the Court that enforcement of the order of the National Labor Relations Board is denied.

It is further ordered that Respondent recover from Petitioner the costs on appeal as itemized below.

Entered by order of the Court.

JAMES A. HIGGINS, *Clerk.*

Issued as Mandate: January 12, 1973.

Costs: None.

A true Copy.

Attest:

JAMES A. HIGGINS, *Clerk.*

APPENDIX C

DECISION AND ORDER

(November 23, 1971)

Upon a charge filed on April 12, 1971, by Mechanics Educational Society of America, AFL-CIO, herein called the Union, and duly served on Savair Manufacturing Company, herein called the Respondent, the Acting General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issued a complaint on June 30, 1971, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 3, 1971, following a Board election in Case 7-RC-10098 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 5, 1971, and at all times thereafter, Respondent has

1. Official notice is taken of the record in the representation proceeding, Case 7-RC-10098, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151; *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 12, 1971, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 14, 1971, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 22, 1971, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint Respondent denies that the Union is the exclusive collective-bargaining representative of its employees in the stipulated appropriate unit or that it is obligated to bargain with the Union since the Board had not afforded it a full and impartial hearing on its objections to the election in the underlying representation proceeding, Case 7-RC-10098. We find no merit in Respondent's position.

The record in Case 7-RC-10098 indicates that, pursuant to a Stipulation for Certification Upon Consent Election, a secret ballot election was conducted among the employees in the stipulated unit in which 22 votes were cast for, and 20 against, the Union and 1 ballot was challenged. Thereafter, Respondent filed timely objections to conduct affecting the results of the election and the Union filed an "Answer to Objections to Election." After a preliminary investigation, the Acting Regional Director ordered a hearing upon the Respondent's Objections 1 through 4. At the hearing, Respondent moved to withdraw its Objection 3 and adduced no evidence in support of its Objection 2. Testimony was taken with respect to Objections 1 and 4 which related, respectively, to the Union's alleged threats to fine employees who failed to sign authorization cards prior to the election, and to the Board agent's alleged refusal to permit an observer to assist an illiterate employee who, consequently, cast a void ballot. In his Report on Objections and Recommendation, the Hearing Officer recommended that the Board overrule Objections 1, 2, and 4, approve the withdrawal of Objection 3, and issue a certification to the Union. Respondent filed timely exceptions to the Hearing Officer's Report.

On March 3, 1971, the Board issued a Decision and Certification of Representative in which it adopted the Hearing Officer's findings and recommendations and certified the Union as the exclusive bargaining agent of Respondent's employees in the stipulated unit. Respondent, on April 12, 1971, filed a document entitled "Petition to Set Aside Certification of Representative and Request for

a Rehearing on Objections to Election." Respondent asserted that it had just learned that prior to hearing certain employees had notified the Regional Director that they wished to object to the election; that the Regional Director did not explain to the employees that they were allowed to appear at the hearing; and that the Board failed to notify the Respondent of these employee objections. The Board, on June 17, 1971, concluding that the employees were not parties with standing to file objections, denied the Respondent's petition as lacking in merit.

Respondent's contentions herein present the same representation issues which had been considered and determined by the Board in the antecedent representation proceeding in Case 7-RC-10098.

It is well settled that in the absence of newly discoverd or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previ-

2. See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

ously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.[3] We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent, a Michigan corporation, with its principal office and place of business in Warren, Michigan, and another installation in Detroit, Michigan, is engaged in the manufacture, sale, and distribution of machine parts and related products. During the calendar year 1970 Respondent had a gross revenue in excess of $500,000 and purchased and had delivered to its installations steel and other goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

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3. In its Answer to the Complaint, the Respondent leaves to proof the Union's status as a labor organization and the appropriateness of the stipulated unit. As these issues were determined by the Board in the underlying representation case, they are not subject to litigation herein.

II. The Labor Organization Involved

Mechanics Educational Society of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The Unfair Labor Practices

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the Employer at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

2. The certification

On September 22, 1970, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on March 3, 1971, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 5, 1971, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-

bargaining representative of all the employees in the above-described unit. Commencing on or about March 5, 1971, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since March 5, 1971, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusion of Law

1. Savair Manufacturing Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Mechanics Educational Society of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 3, 1971, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 5, 1971, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Savair Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Mechanics Educational Society of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office

clerical employees, guards, foremen, and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plants in Warren and Detroit, Michigan, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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4. In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

Edward B. Miller, Chairman
Howard Jenkins, Jr., Member
Ralph E. Kennedy, Member
(Seal) National Labor Relations Board

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Mechanics Educational Society of America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by the Employer at its plants at 24488-24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

Savair Manufacturing Company
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3200.

APPENDIX D

Hearing Officer's Report on Objections and Recommendation

(November 12, 1970)

A Notice of Hearing issued by the Acting Regional Director for the Seventh Region of the National Labor Relations Board on October 8, 1970. A hearing was held before me on October 28, 1970, at Detroit, Michigan. The hearing was conducted in accordance with the provisions of Section 102.69(e) of the Board's Rules and Regulations, Series 8, as amended. All the parties were presented and afforded full opportunity to be heard, to examine the witnesses, to introduce relevant evidence and to present oral argument at the close of the hearing.

In the Notice of Hearing, the Acting Regional Director ordered that the hearing be held for the purpose of resolving issues raised by Employer's Objections to Election, numbers 1 through 4. The Objections are set forth verbatim as follows:

1. That the Union, and persons acting on its behalf, through misrepresentations, trickery and threats deceived certain employees into believing that if they failed or refused to sign a card requesting an election and the union was successful, they would be fined from Twenty and 00/100 ($20.00) Dollars to Two Hundred and 00/100 ($200.00) Dollars, before they could become members of that union, which acts interfered with the employees' right to exercise a free choice.

2. That the union, and persons acting on its behalf, through misrepresentations and threats, deceived the employees into believing that if they signed a card their name was on record with the N.L.R.B., and they had agreed to vote for the union and they could not change their vote at the time of the election.

3. That the union and others acting in its behalf, circulated and distributed information just prior to the election that they could guarantee to the employees that they would receive a wage scale comparable to the tool and die shops in the area, when in fact these employees are employed in semi-production general type machine shop.

4. That the N.L.R.B.'s representative restricted the observers from assisting any employee and then failed to assist illiterate employees, and as a consequence, their ballot was either voided or did not express their true intent.

The objecting party, the Employer moved at the hearing to withdraw its Objection No. 3. It is recommended that the Board approve Employer's request to withdraw Objection No. 3.

With respect to Objection No. 2, no evidence was adduced in support of that Objection and I recommend that the Board therefore overrule Objection No. 2.

The Employer produced testimony of six employee-witnesses to support its objections. Two of these witnesses, Stafford and Neck testified with respect to Objection No. 4. With respect to Objection No. 1, only two witnesses testified in regard to campaign trickery or threats relating to the fining of an employee who failed to sign union authorization cards prior to the election. Of these two witnesses, Bridgeman was twice recalled and gave the most extensive testimony. According to Bridgeman's testimony, two agents of the

Union made reference to this fine or assessment. They were Secretary-Treasurer of the Union Alfred Smith, who conducted employee organizational meetings, and Bennie McKnight an employee card solicitor who campaigned on behalf of the Petitioner. The agency of Smith is not disputed. However, the Petitioner claims that McKnight, as an unpaid card solicitor and employee of the Employer, should not be construed to have acted as an agent on behalf of the Petitioner. The record clearly establishes that McKnight was authorized to distribute authorization cards on behalf of the Petitioner and was, in fact, the chief employee organizer acting on behalf of the Petitioner. The record also establishes that Smith, who appears to have been in charge of the Petitioner's organizing efforts authorized McKnight to explain the Petitioner's initiation fee policy to employees, after Smith had become aware that questions were being raised by employees on that issue. Under these circumstances, it would appear that, although McKnight was not a paid employee of the Petitioner, he was, an agent of the Union and acting within the scope of his authority in representing the Petitioner's initiation fee policy, though he may have done so inaccurately. *Hampton Merchants Association,* 151 NLRB 1307.

According to the uncontradicted testimony of Bridgeman, it appears that McKnight, in obtaining signatures from employees of union membership and authorization cards, told employees that they would be subject to a fine or an assessment fee if they did not sign the card in the eventuality that the union won the election. There was, therefore, a great deal of discussion among the employees as to whether they should sign the union authorization and membership card in view of the fact that regardless of their desires and how they would actually vote, they could

save themselves some money in the event the union were successful. No specific amount was mentioned. Bridgeman used the word "fine" interchangeably with "assessment" and "initiation fee". His testimony is not entirely clear that McKnight used the word "fine". In any event, prior to the filing of the petition, because of the questions raised by employees, according to Bridgeman, McKnight telephoned Smith to find out what the union's policy was. The next day, employees asked McKnight whether it were true that they would have to pay a "fine", McKnight answered in the affirmative and said that the employees could call Mr. Smith if they so desire and he gave them the telephone number. Subsequent to the filing of the petition, an employee meeting was held at a rented hall under the supervision of Mr. Smith at which approximately 20 employees were in attendance. According to Bridgeman, at the meeting the benefits of unionization were discussed and questions were invited from the floor. An employee asked Mr. Smith: "* * * if there was a fee, not fine, we can't call it a fine, to join, and an initiation fee." And: "If there was a fee, you know if you didn't sign the slip [union authorization and membership card] and it was, in turn, [sic.] in before the election. There is a small fee, it was never stipulated what amount the fee should be." According to Bridgeman, Smith answered: "There would be a small fee." No amount, according to Bridgeman, was ever specified. Bridgeman further testified that subsequent to that meeting, and prior to the election, Bennie McKnight told employees that if they signed the union membership and authorization card before the election, there would be no union "initiation fee" if the union were successful at the election. Bridgeman was recalled to the stand twice.

The second time he was recalled, he testified that McKnight referred to a "fine" after the filing of the petition but was unable to specify the circumstances such as the contexts of the conversations and when and where they occurred. Under these circumstances and because of his proclivity to confuse and interchange the characterization "fine" with "initiation fee", it is my finding that there is insufficient evidence based upon Bridgeman's testimony that a threat of a "fine" occurred either before or after the filing date of the petition. Upon cross-examination, Bridgeman conceded that what Smith said at the meeting was that an initiation fee would be waived for all card signers who executed their cards before the election in the eventuality that the union won the election.

One other witness, employee Rice, testified that McKnight stated when soliciting that: "You would get fined if you did not [sign a card]." No amount was specified. Viewing this testimony in relation to Bridgeman's testimony, it would appear that McKnight made the statements with respect to the purpose of signing a card prior to the filing of the petition when he was soliciting the necessary showing of interest for the Union and it would appear to have occurred prior to the filing of the petition. In any event, it is my conclusion that the objecting party has failed to establish that the Union engaged in a threat to employees to assess a fine upon those who failed to sign cards on or after the filing date of the petition. Conduct, of course, occurring prior to the filing of the petition is not grounds for setting aside the election.[1] Whether or not a sufficient valid showing of interest was obtained, constitutes a matter for administrative determination. With respect to what transpired after the filing of the petition, Smith testified that he, at the

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[1] *Goodyear Tire and Rubber Co.*, 138 NLRB 453.

meeting, referred to by Bridgeman, told the employees that an *initiation fee* would be waived not only in the eventuality of the union winning the election, but also in the eventuality of the union negotiating a contract. There is no evidence, nor any contention, that the Union misrepresented to employees that they would have to become members immediately upon the certification of the union as bargaining agent.

In reviewing the testimony of the witnesses, it is clear to me that what the Union did through Smith and through McKnight was to inform employees that an initiation fee would be waived in the eventuality of a successful election for the Union. Whatever confusion may have existed with respect to terminology utilized by McKnight prior to the filing of the petition, it seems clear that this was the expressed policy as set forth at the initial organizational meeting after the filing of the petition. However, the Employer argues that the waiver of an initiation fee constitutes an economic inducement offered by the Union which impeded employees free choice. The Employer further argues that it is an economic inducement contingent upon how employees vote in the election and on the results of the election, and as such, constitutes an objectionable inducement. This argument, however, has been rejected by the Board. In the *DIT-MCO, Inc.*, 163 NLRB No. 147 case, the Board held that a provisional waiver of initiation fees prior to election is not improper regardless of whether it is contingent upon the results of the election. The Board pointed out that it would be unreasonable to conclude that a statement by the union during an election to the effect that an assessment of money or an obligation to pay money which could be avoided by the execution of a union membership card prior to the election, would influence a vote in favor of the Union when the simplest way to avoid the incurrence of any financial obligation

would be to vote "no". Thus, it would appear that any threat to impose a "fine", "assessment" or "initiation fee", or "payment to join the union", although it may induce an employee to execute a union authorization membership card, would more probably induce him to vote "no" at the election. It is my conclusion and recommendation, therefore, that the Employer has failed to show that the Union has engaged in conduct which would have interfered with the free choice of an election and, therefore, I recommend that the Board overrule Objection No. 1.

Objection No. 4

Employer's observer Raymond Neck, testified that at the election he was aware that employee Stafford was somewhat illiterate, but was unaware of the extent of his illiteracy and did not know that Neck would be unable to understand the ballot. In any event, Neck testified that Board Agent Bolton, in the presence of the two observers, including Bennie McKnight and Neck, instructed the voters on the manner in which they should cast their ballot. He did this as the voters approached the identification table. Stafford was included in a group of 6 or 7 voters waiting in line. Bolton orally instructed the voters as to the mechanics of voting. He then individually asked each of the 6 or 7 voters including Stafford whether they understood his instructions. According to Neck, he asked Stafford if he understood the instructions and that Stafford either nodded his head or answered "yes". Neck testified that he did not volunteer to assist Bolton in this instruction. The Employer's Counsel attempted to elicit testimony that Bolton instructed the observers not to speak to one another nor to the Board Agent, and therefore this was the cause of Stafford's failure to understand the voting procedure. Neck's testimony, however, reveals that Bolton told

the observers not to address the *employees,* and that he, Neck, assumed Stafford understood the instructions, and, therefore, made no attempt to advise the Board Agent of any further necessary instruction.

After Stafford received his ballot, he went into the booth and without unfolding his ballot, placed a mark on the unprinted back portion of the ballot which was exposed. He then returned and deposited the ballot. Thus, Stafford's ballot constituted the one void ballot cast in the election. Stafford testified that when he was standing in line to vote with about 6 other employees that: "I think the Board Agent was trying to tell me [how to vote] but I didn't understand." He testified that he didn't recall what the Board Agent said. When asked: "* * * did you vote?" He testified: "I didn't, I just marked the paper, I can't read, I didn't unfold it, I didn't want the Union." In cross-examination he testified:

> Q. Did you listen to him give them [the other voters] the instructions?
> A. No.
> Q. You weren't listening?
> A. No. He was talking about how to vote but I wasn't paying no attention.
> Q. In other words, you ignored him?
> A. Yes.

Stafford testified that when asked to sign a union authorization membership card, he told McKnight: "* * * Rather than pay, you can fill it out for me, I can't read or write. I don't want the Union but I don't want to pay if it comes in." Neither Bolton nor McKnight were called to testify.

Contrary to the Employer's argument, I find that the NLRB agent conducting the election did ask each voter individually whether he understood his instructions and that Stafford answered in the affirmative. Further, contrary to the Employer, I conclude that

the failure of the Employer's observer to offer assistance was not caused by any instruction of the Board Agent, but resulted from his own conclusion that Stafford did not need assistance beyond that given by the Board Agent.

The Employer further argues that the Union observer should have offered to assist Bolton in giving special instructions to Stafford, or at least should have disclosed the fact that Stafford could not read and write since Stafford advised him of this fact when McKnight filled out the Union authorization membership card. I do not agree with the Employer that either the Board Agent or any of the observers engaged in any conduct which deprived Stafford of the opportunity to cast an intelligent choice. At most, Stafford's testimony indicates that sometime apparently preceding the filing of the petition when McKnight was soliciting a showing of interest for the petition, McKnight was advised of Stafford's illiteracy. Afterwards, the petition was filed and an election campaign ensued. During the election campaign, the usual Board Notices, with replicas of the ballot were posted. It would be totally unjustified to expect that at the election McKnight should have concluded that despite Stafford's own positive assurance that he understood Bolton's instruction and despite his exposure to the sample ballots and the propagandizing of both parties that Stafford did not know how to cast his ballot. The Board Agent not only explained the mechanics of voting to a group of employees in close proximity as they waited to vote but he also made an individual effort in addressing each individual employee as to whether they specifically understood his instructions. Stafford answered in the affirmative.

Certainly the Regional Director is charged with the obligation of conducting elections under the highest standards possible to afford a free choice for all

voters. A failure to make clear the election procedure because of communication problems, such as inadequate instructions to foreign speaking voters where such problem was known to exist constitutes grounds to set aside the election. *Fibre Leather Mfg. Corp.*, 167 NLRB 393. However, it is my conclusion that the Employer has failed to establish that Stafford did not have the opportunity to cast a ballot because of the failure of the Board Agent or because of some trickery on the part of the observers. No amount of care and precaution can overcome such undisclosed resistance to instruction as exhibited by Stafford. I therefore recommend that Objection No. 4 be overruled. Cf. *Craft Manufacturing Co.*, 122 NLRB 341.

CONCLUSION

For the reasons stated above, it is recommended that the Board overrule Objections 1, 2 and 4, and approve the withdrawal of Objection No. 3 and issue a Certification that Mechanics Educational Society of America, AFL–CIO has been designated and selected by a majority of the employees of the above-named Employer in the unit herein involved as their representative for the purposes of collective bargaining and pursuant to Section 9(a), as amended, said organization is the exclusive representative of all employees in such unit for the purpose of collective bargaining with respect to rate of pay, wages, hours of employment, and other conditions of employment.

Dated at Detroit, Michigan, this 12th day of November, 1970.

(S) THOMAS R. WILKS.

THOMAS R. WILKS,

Hearing Officer, National Labor Relations Board, Seventh Region, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226.

APPENDIX E

Decision and Certification of Representative

(March 3, 1971)

Pursuant to a Stipulation for Certification Upon Consent Election approved on August 27, 1970, an election by secret ballot was conducted on September 22, 1970, under the direction and supervision of the Regional Director for Region 7 among the employees in the stipulated unit. At the conclusion of the election the parties were furnished with a tally of ballots which showed that of approximately 45 eligible voters, 44 cast ballots, of which 22 were for, and 20 against, the Petitioner, 1 was challenged, and 1 was declared void. The challenged ballot was not sufficient to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director conducted an investigation and, on October 8, 1970, issued and duly served upon the parties a Notice of Hearing upon the Employer's objections. After a hearing held on October 28, 1970, at which all parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Hearing Officer Thomas R. Wilks, in his Report issued on November 12, 1970 recommended that the objections be overruled. Thereafter, the Employer filed timely exceptions to the Hearing Officer's Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudiced error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2 (6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute an unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintainance employees employed by the Employer at its plants at 24488–24536 Gibson Drive, Warren, Michigan, and 10900 Charlevoix Street, Detroit, Michigan, but excluding office clerical employees, guards, foremen, and all other supervisors as defined in the Act.

5. The Board has considered the Employer's objections, the Hearing Officer's Report, and the exceptions thereto, and hereby adopts the Hearing Officer's findings and recommendations.

Accordingly, as the tally shows that the Petitioner has obtained a majority of the valid ballots cast, we

shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Mechanics Educational Society of America, AFL–CIO, has been designated and selected by a majority of the employees in the unit found appropriate herein as their representative for the purposes of collective bargaining and that, pursuant to Section 9(a) of the Act, the said labor organization is the exclusive representative of all employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Dated, Washington, D. C., March 3, 1971.

[SEAL] EDWARD B. MILLER, *Chairman,*
HOWARD JENKINS, JR., *Member,*
RALPH E. KENNEDY, *Member,*
National Labor Relations Board.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SAVAIR MFG. CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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WO. 2-8745—WO. 2-8732

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BRIEF IN OPPOSITION

QUESTION PRESENTED

The Respondent would add the following question as presented by this case and would request a reply by the Petitioner thereto: Whether the failure of the Regional Director of the National Labor Relations Board, upon receipt of an employee's letter protesting conduct by the

Union, to inform the Union and Employer of such letter or to inform the employee that he could appear at the hearing on objections to the election was a violation of 29 CFR §102.69 requiring that the Regional Director investigate objections to an election[1]

REGULATION INVOLVED

The pertinent portion of 29 CFR §102.69 (a) and (c) as follows:

> "Section 102.69 Election procedure; tally of ballots; objections; certification by regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing. (a) * * * Within 5 days after the tally of ballots has been furnished, any party may file with the regional director four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall immediately be served upon each of the other parties by the party filing them, and proof of service shall be made.
>
> (c) If objections are filed to the conduct of the election on conduct affecting the result of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the regional director shall investigate such objections or challenges, or both. In either instance, such action by the regional director may be on the basis of an administrative investigation or, if it appears to the regional director that substantial and material factual issues exist which can be resolved only after a hearing, he shall issue and cause to be served on the parties a notice of hearing on said issues before a hearing officer."

STATEMENT

The Respondent would add the following additional facts not included in the Petitioner's statement.

Pursuant to timely objections filed by the Respondent to the representation election, the Regional Director of the National Labor Relations Board determined that the objections raised substantial and material factual issues which required a hearing. At least ten (10) days prior to the hearing the Director received a letter protesting the Union's conduct from an employee, Jack Reibling. The Director did not notify either of the parties that such letter was received nor did the Director tell the writer that he could appear at the upcoming hearing. Neither the employer nor the union was ever informed by the National Labor Relations Board as to the contents or objections contained in the letter. Without any apparent investigation of the matter, the Director answered Mr. Reibling's letter by saying in part:

> "Some of the alleged conduct that you set forth may not necessarily be grounds for setting the election aside such as the buying of drinks or the union's promises of what it would accomplish if it were to be selected as bargaining agent." (Appendix pp. 11b-12b)

Mr. Reibling did not testify at the hearing and all of the Employer's objections to the election were held to be without merit. The Board adopted the findings and recommendations of the Hearing Officer and certified the Union as bargaining representative on March 3, 1971.

On or about April 1, 1971, the company learned of the emlpoyee's letter of protest. On April 7, 1971, the com-

pany requested a rehearing on objections to the election which was denied on June 17, 1971. The court below indicated that the question concerning the Director's conduct was without merit. (Appendix p. 18b).

ARGUMENT

A. The decision of the Court of Appeals for the Sixth Circuit, that a union's attempt to recruit employees to sign union authorization cards by informing them that those who do so will not be required to pay a fee should the union be successful is impermissable, is legally sound and review thereof by this Court is not warranted.

1. The paramount purpose of the National Labor Relations Act is to insure that employees are free to select or reject a collective bargaining representative in an atmosphere devoid of restraint or coercion by either the union or employer. Inducements offered to employees by the union or employer destroy the free choice of the employees if they are material and if they are likely to have an appreciable effect upon the average mind. *NLRB v. Gorbea, Perez & Morell S. en C.*, 328 F 2d 679 (CA 1, 1964). The danger of destroying the laboratory conditions of a representation election are especially great where the inducement is economic. The courts have many times recognized that the promise of economic benefit is likely to have an undue effect upon employees' freedom of choice and thus have prohibited an employer from giving a wage increase to defeat unionization, *NLRB v. Exchange Ports Company*, 375 US 405, 84 S Ct 457, 11 L Ed 2d 435 (1964) or to promise a wage increase if the union is defeated. *NLRB* v. *Bailey Company*, 180 F 2d 278 (CA 6, 1950). The court below held that it was likewise im-

proper for a union to promise to waive their initiation fee if an employee signed an authorization card.

In its petition the National Labor Relations Board argues that the lower court was incorrect in concluding that a waiver of an initiation fee constitutes a promise of benefit which improperly coerces an employee because an employee can sign a card and then proceed to vote against the union. Thus in the event the union wins the election, there would be no fee in the event that the union loses the election, there would be no fee. The Respondent submits that this view overlooks the fact that employees should not be required to compromise their principles and to accept even this tenuous alliance with the union by indicating a showing of interest when in fact there is none. How can it be said that such a procedure is not coercive when at the very first step in the election process an employee who does not favor the union must sign one of their cards in order to avoid paying a fee should the union prevail. The Respondent submits that economic inducements in whatever form are inherently dangerous and that the economic inducement involved here did destroy the employees' freedom of choice.

2. The decision of the lower court is correct in view of the fact that the campaign procedure used by the union was confusing as well as coercive. In determining whether there has been an interference with employees' freedom of choice, all relevant facts and circumstances of the case must be considered. *NLRB* v. *Gilmore Industries, Inc.*, 341 F2d 240 (CA 6, 1965). The court below noted that there was some controversy as to whether the union threatened to fine employees who would not sign cards or whether the union offered to waive the initiation fee for those who did. (Appendix p. 15b). Significantly, there was no issue of possible threats of a fine in either of the two cases claimed

by the Respondent to conflict with the decision of the court below, namely *NLRB* v. *G. K. Turner Associates*, 457 F 2d 484, 489 (CA 9, 1972) and *NLRB* v. *DIT-MCO*, 428 F 2d 775, 778, 779 (CA 8, 1970). A great deal of confusion can arise out of the campaign tactics of the union in this regard. Employees may wonder whether the union is going to reward economically those who favor the union's program or whether the union is threatening punishment for those who do not. There was testimony that the employees in the instant case shared such confusion and that *some* of them received a clarification at an employee meeting subsequent to the filing of the petition for the election. See opinion of court below p. 16b of Appendix. Thus, the court below, in surveying the pre-election conduct of the union as a whole, correctly determined that the intimidation, coercion and confusion generated by the union's offer of economic benefit conditioned on the outcome of the election destroyed the employees' freedom of choice.

B. The failure of the Regional Director upon receipt of an employee's letter protesting improper conduct by the union to inform the union and employer of such letter or to inform the employee that he could appear at the hearing on objections to the election was a violation of 29 CFR §102.69 (a) and (c).

1. In adopting regulations to effectuate the purposes of the National Labor Relations Act 29 USC 151 et seq., the Board formulated 29 CFR 102.69 which provides that it is the function of the Regional Director to investigate objections to a representation election.

The requirement that the Direction investigate elections and order a hearing if necessary indicates that reliance is placed upon the Director to act fairly to *both* sides in assessing the validity of an election. The regulations must

be construed in a manner most likely to protect public rights created and defined in the National Labor Relations Act. On the contrary, the Director's actions concerning information bearing upon the fairness of the election was in effect suppressed in this case. The employee was not told of the hearing on objections and was in fact given the impression that his objections were without merit. At the very least, he should have been directed to talk to his employer concerning any possible information he might have. Respondent submits that the public policy behind the Act requires that the Director ought to encourage rather than discourage the presentation of any relevant information which his investigation discloses in order that all available evidence be considered in formulating a decision.

The Petitioner contended that the Director acted properly since the employee was not a "party" as required by §102.69 and not entitled to file an objection. In their zealousness to enforce the spirit of the Act, courts have disregarded the technical requirements of the regulations. Thus it has been held that the Regional Director ought to have investigated an objection even though a copy thereof was not served upon the opposite party by the company as required by §102.69 (a). *NLRB* v. *Brown Lumber Company*, 336 F 2d 641 (CA 6, 1964). Likewise it was held in *NLRB* v. *Mrs. Weaver's Salads*, 439 F 2d 1116 (CA 6, 1971) that the Director acted arbitrarily in declining to investigate an objection because it was not timely filed as required by §102.69 (a). Thus, the courts have ignored the technical requirements of §102.69 where they conflicted with the overriding policy of insuring that employees have a free choice in accepting or rejecting bargaining representatives. The duty of the Director to investigate will promote fairness only if he is not allowed to close his eyes to evidence which is likely to be relevant.

At the time the letter was received, the Respondent had filed a written objection to alleged false promises on the part of the union. (Objection #3 Appendix p. 2b).

The Director was necessarily informed that the employee was complaining of false promises on the part of the union. The only action taken by the Director, however, was to inform Mr. Reibling that his objections were probably nonmeritorious. Respondent respectfully submits that the Director violated the spirit of the Act by failing to investigate the employee's complaint and by failing to inform him that he could testify at the hearing.

CONCLUSION

The Respondent respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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642-2555

March 5, 1973.

APPENDIX

HEARING OFFICER'S REPORT ON OBJECTIONS AND RECOMMENDATION

(November 12, 1970)

A Notice of Hearing issued by the Acting Regional Director for the Seventh Region of the National Labor Relations Board on October 8, 1970. A hearing was held before me on October 28, 1970, at Detroit, Michigan. The hearing was conducted in accordance with the provisions Section 102.69(e) of the Board's Rules and Regulations, Series 8, as amended. All the parties were presented and afforded full opportunity to be heard, to examine the witnesses, to introduce relevant evidence and to present oral argument at the close of the hearing.

In the Notice of Hearing, the Acting Regional Director ordered that the hearing be held for the purpose of resolving issues raised by Employer's Objections to Election, numbers 1 through 4. The Objections are set forth verbatim as follows:

1. That the Union, and persons acting on its behalf, through misrepresentations, trickery and threats deceived certain employees into believing that if they failed or refused to sign a card requesting an election and the union was successful, they would be fined from Twenty and 00/100 ($20.00) Dollars to Two Hundred and 00/100 ($200.00) Dollars, before they could become members of that union, which acts interfered with the employees' right to exercise a free choice.

2. That the union, and persons acting on its behalf, through misrepresentations and threats, deceived the employees into believing that if they signed a card their

name was on record with the N.L.R.B., and they had agreed to vote for the union and they could not change their vote at the time of the election.

3. That the union and others acting in its behalf, circulated and distributed information just prior to the election that they could guarantee to the employees that they would receive a wage scale comparable to the tool and die shops in the area, when in fact these employees are employed in semi-production general type machine shop.

4. That the N.L.R.B.'s representative restricted the observers from assisting any employee and then failed to assist illiterate employees, and as a consequence, their ballot was either voided or did not express their true intent.

The objecting party, the Employer moved at the hearing to withdraw its Objection No. 3. It is recommended that the Board approve Employer's request to withdraw Objection No. 3.

With respect to Objection No. 2, no evidence was adduced in support of that Objection and I recommend that the Board therefore overrule Objection No. 2.

The Employer produced testimony of six employee-witnesses to support its objections. Two of these witnesses, Stafford and Neck testified with respect to Objection No. 4. With respect to Objection No. 1, only two witnesses testified in regard to campaign trickery or threats relating to the fining of an employee who failed to sign union authorization cards prior to the election. Of these two witnesses, Bridgeman was twice recalled and gave the most extensive testimony. According to Bridgeman's testimony, two agents of the Union made reference to this fine or assessment. They were Secretary-Treasurer of

the Union Alfred Smith, who conducted employee organizational meetings, and Bennie McKnight, an employee card solicitor who campaigned on behalf of the Petitioner. The agency of Smith is not disputed. However, the Petitioner claims that McKnight, as an unpaid card solicitor and employee of the Employer, should not be construed to have acted as an agent on behalf of the Petitioner. The record clearly establishes that McKnight was authorized to distribute authorization cards on behalf of the Petitioner and was, in fact, the chief employee organizer acting on behalf of the Petitioner. The record also establishes that Smith, who appears to have been in charge of the Petitioner's organizing efforts authorized McKnight to explain the Petitioner's initiaion fee policy to employees, after Smith had become aware that questions were being raised by employees on that issue. Under these circumstances, it would appear that, although McKnight was not a paid employee of the Petitioner, he was, an agent of the Union and acting within the scope of his authority in representing the Petitioner's initiation fee policy, though he may have done so inaccurately. *Hampton Merchants Association*, 151 NLRB 1307.

According to the uncontradicted testimony of Bridgeman, it appears that McKnight, in obtaining signatures from employees of union membership and authorization cards, told employees that they would be subject to a fine or an assessment fee if they did not sign the card in the eventuality that the union won the election. There was, therefore, a great deal of discussion among the employees as to whether they should sign the union authorization and membership card in view of the fact that regardless of their desires and how they would actually vote, they could save themselves some money in the event the union were successful. No specific amount was mentioned. Bridgeman used the word "fine" interchangeably with

"assessment" and "initiation fee". His testimony is not entirely clear that McKnight used the word "fine". In any event, pror to the filing of the petition, because of the questions raised by employees, according to Bridgeman, McKnight telephoned Smith to find out what the union's policy was. The next day, employees asked McKnight whether it were true that they would have to pay a "fine", McKnight answered in the affirmative and said that the employees could call Mr. Smith if they so desire and he gave them the telephone number. Subsequent to the filing of the petition, an employee meeting was held at a rented hall under the supervision of Mr. Smith at which approximately 20 employees were in attendance. According to Bridgeman, at the meeting the benefits of unionization were discussed and questions were invited from the floor. An employee asked Mr. Smith: " * * * if there was a fee, not fine, we can't call it a fine, to join, and an initiation fee." And: "If there was a fee, you know if you didn't sign the slip [union authorization and membership card] and it was, in turn, [sic.] in before the election. There is a small fee, it was never stipulated what amount the fee should be." According to Bridgeman, Smth answered: "There would be a small fee." No amount, according to Bridgeman, was ever specified. Bridgeman further testified that subsequent to that meeting, and prior to the election, Bennie McKnight told employees that if they signed the union membership and authorization card before the election, there would be no union "initation fee" if the union were successful at the election. Bridgeman was recalled to the stand twice.

The second time he was recalled, he testified that McKnight referred to a "fine" after the filing of the petition but was unable to specify the circumstances such as the contexts of the conversations and when and where they

occurred. Under these circumstances and because of his proclivity to confuse and interchange the characterization "fine" with "initiation fee", it is my finding that there is insufficient evidence based upon Bridgeman's testimony that a threat of a "fine" occurred either before or after the filing date of the petition. Upon cross-examination, Bridgeman conceded that what Smith said at the meeting was that an initiation fee would be waived for all card signers who executed their cards before the election in the eventuality that the union won the election.

One other witness, employee Rice, testified that McKnight stated when soliciting that: "You would get fined if you did not [sign a card]." No amount was specified. Viewing this testimony in relation to Brdgeman's testimony, it would appear that McKnight made the statements with respect to the purpose of signing a card prior to the filing of the petition when he was soliciting the necessary showing of interest for the Union and it would appear to have occurred prior to the filing of the petition. In any event, it is my conclusion that the objecting party has failed to establish that the Union engaged in a threat to employees to assess a fine upon those who failed to sign cards on or after the filing date of the petition. Conduct, of course, occurring prior to the filing of the petition is not grounds for setting aside the election.[1] Whether or not a sufficient valid showing of interest was obtained, constitutes a matter for administrative determination. With respect to what transpired after the filing of the petition, Smith testifid that he, at the meeting, referred to by Bridgeman, told the employees that an *initiation fee* would be waived not only in the eventuality of the union win-

[1] *Goodyear Tire and Rubber Co.*, 138 NLRB 453.

ning the election, but also in the eventuality of the union negotiating a contract. There is no evidence, nor any contention, that the Union misrepresented to employees that they would have to become members immediately upon the certification of the union as bargaining agent.

In reviewing the testimony of the witnesses, it is clear to me that what the Union did through Smith and through McKnight was to inform employees that an initiation fee would be waived in the eventuality of a successful election for the Union. Whatever confusion may have existed with respect to terminology utilized by McKnight prior to the filing of the petition, it seems clear that this was the expressed policy as set forth at the initial organizational meeting after the filing of the petition. However, the Employer argues that the waiver of an initiation fee constitutes an economic inducement offered by the Union which impeded employees free choice. The Employer further argues that it is an economic inducement contingent upon how employees vote in the election and on the results of the election, and as such, constitutes an objetcionable inducement. This argument, however, has been rejected by the Board. In the *DIT-MCO, Inc.*, 163 NLRB No. 147 case, the Board held that a provisional waiver of initiation fees prior to election is not improper regardless of whether it is contingent upon the results of the election. The Board pointed out that it would be unreasonable to conclude that a statement by the union during an elction to the effect that an assessment of money or an obligation to pay money which could be avoided by the execution of a union membershop card prior to the election, would influence a vote in favor of the Union when the simplest way to avoid the incurrence of any financial obligation would be to vote "no". Thus, it would appear that any threat to impose a "fine", "assessment" or "initiation fee", or "payment

to join the union", although it may induce an employee to execute a union authorization membership card, would more probably induce him to vote "no" at the election. It is my conclusion and recommendation, therefore, that the Employer has failed to show that the union has engaged in conduct which would have interfered with the free choice of an election and, therefore, I recommend that the Board overrule Objection No. 1.

Objection No. 4

Employer's observer Raymond Neck, testified that at the election he was aware that employee Stafford was somewhat illiterate, but was unaware of the extent of his illiteracy and did not know that Neck would be unable to understand the ballot. In any event, Neck testified that Board Agent Bolton, in the presence of the two observers, including Bennie McKnight and Neck, instructed the voters on the manner in which they should cast their ballot. He did this as the voters approached the identification table. Stafford was included in a group of 6 or 7 voters waiting in line. Bolton orally instructed the voters as to the mechanics of voting. He then idividually asked each of the 6 or 7 voters including Stafford whether they understood his instructions. According to Neck, he asked Stafford if he understood the instructions and that Stafford either nodded his head or answered "yes". Neck testified that he did not volunteer to assist Bolton in this instruction. The Employer's Counsel attempted to elicit testimony that Bolton instructed the observers not to speak to one another nor to the Board Agent, and therefore this was the cause of Stafford's failure to understand the voting procedure. Neck's testimony, however, reveals that Bolton told the observers not to address the *employees*, and that he, Neck, assumed Stafford understood the instruc-

tions, and, therefore, made no attempt to advise the Board Agent of any further necessary instruction.

After Stafford received his ballot, he went into the booth and without unfolding his ballot, placed a mark on the unprinted back portion of the ballot which was exposed. He then returned and deposited the ballot. Thus, Stafford's ballot constituted the one void ballot cast in the election. Stafford testified that when he was standing in line to vote with about 6 other employees that: "I think the Board Agent was trying to tell me [how to vote] but I didn't understand." He testified that he didn't recall what the Board Agent said. When asked: " • • • did you vote?" He testified: "I didn't, I just marked the paper, I can't read, I didn't unfold it, I didn't want the Union." In cross-examination he testified:

> Q. Did you listen to him give them [the other voters] the instructions?
>
> A. No.
>
> Q. You weren't listening?
>
> A. No. He was talking about how to vote but I wasn't paying no attention.
>
> Q. In other words, you ignored him?
>
> A. Yes.

Stafford testified that when asked to sign a union authorization membership card, he told McKnight: " • • • Rather than pay, you can fill it out for me, I can't read or write. I don't want the Union but I don't want to pay if it comes in." Neither Bolton nor McKnight were called to testify.

Contrary to the Employer's argument, I find that the NLRB agent conducting the election did ask each voter

individually whether he understood his instructions and that Stafford answered in the affirmative. Further, contrary to the Employer, I conclude that the failure of the Employer's observer to offer assistance was not caused by any instruction of the Board Agent, but resulted from his own conclusion that Stafford did not need assistance beyond that given by the Board Agent.

The Employer further argues that the Union observer should have offered to assist Bolton in giving special instructions to Stafford, or at least should have disclosed the fact that Stafford could not read and write since Stafford advised him of this fact when McKnight filled out the Union authorization membership card. I did not agree with the Employer that either the Board Agent or any of the observers engaged in any conduct which deprived Stafford of the opportunity to cast an intelligent choice. At most, Stafford's testimony indicated that sometime apparently preceding the filing of the petition when McKnight was soliciting a showing of interest for the petition, McKnight was advised of Stafford's illiteracy. Afterwards, the petition was filed and an election campaign ensued. During the election campaign, the usual Board Notices, with replicas of the ballot were posted. It would be totally unjustified to expect that at the election McKnight should have concluded that despite Stafford's own positive assurance that he understood Bolton's instruction and despite his exposure to the sample ballots and the propagandizing of both parties that Stafford did not know how to cast a ballot. The Board Agent not only explained the mechanics of voting to a group of employees in close proximity as they waited to vote but he also made an individual effort in addressing each individual employee as to whether they specifically understood his instructions. Stafford answered in the affirmative.

Certainly the Regional Director is charged with the obligation of conducting elections under the highest standards possible to afford a free choice for all voters. A failure to make clear the election procedure because of communication problems, such as inadequate instructions to foreign speaking voters where such problem was known to exist constitutes grounds to set aside the election. *Fibre Leather Mfg. Corp.*, 167 NLRB 393. However, it is my conclusion that the Employer has failed to establish that Stafford did not have the opportunity to cast a ballot because of the failure of the Board Agent or because or some trickery on the part of the observers. No amount of care and precaution can overcome such undisclosed resistance to instruction as exhibited by Stafford. I therefore recommend that Objection No. 4 be overruled. Cf. *Craft Manufacturing Co.*, 122 NLRB 341.

Conclusion

For the reasons stated above, it is recommended that the Board overrule Objections 1, 2, and 4, and approve the withdrawal of Objection No. 3 and issue a Certification that Mechanics Educational Society of America, AFL-CIO has been designated and selected by a majority of the employees of the above-named Employer in the unit herein involved as their representative for the purposes of collective bargaining and pursuant to Section 9(a), as amended, said organization is the exclusive representative of all employees in such unit for the purpose of collective bargaining with respect to rate of pay, wages, hours of employment, and other conditions of employment.

Dated at Detroit, Michigan, this 12th day of November, 1970.

/s/ THOMAS R. WILKS,
THOMAS R. WILKS,

Hearing Officer, National Labor Relations Board, Seventh Region, 500 Book Building, 1249 Washing-

NATIONAL LABOR RELATIONS BOARD

Region 7

500 Book Building, Detroit, Michigan 48226
Telephone 226-3200

October 21, 1970

Mr. Jack E. Reibling
29287 Dembs
Roseville, Michigan 48066

Re: Savair Manufacturing Company
Case No. 7-RC-10098

Dear Mr. Reibling:

This will acknowledge your letter of October 15, 1970, and its contents have been noted.

You indicate that you want to object to the election that was conducted in the above matter on September 22, 1970 for certain enumerated reasons. Although this is commendatory on your part to bring to our attention conduct which you believe had a coercive impact upon the results of the election, I must regretfully advise you that since you are not a party to this representation proceeding, you have no standing under the law to file objections to the election. Additionally, such objections must be filed within five working days after the election has been conducted. Some of the alleged conduct that you set forth may not necessarily be grounds for setting the election aside such as the buying of drinks or the union's promises of what it would accomplish if it were to be selected as bargaining agent. Nevertheless, I wish to observe that objections to the election were indeed timely filed by one of the par-

ties to this proceeding and following preliminary investigation of same has been set down for hearing and should be heard on October 28, 1970. Although the objections as filed do not specifically encompass the complaints you raise in your letter, yet it may very well be that some of these may be adduced in the hearing.

If you have any further questions, please feel free to call upon this office.

Very truly yours,

/s/ Jerome H. Brooks
Jerome H. Brooks
Regional Director

BG:lap

No. 72-1225

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

National Labor Relations Board, *Petitioner*, v. Savair Manufacturing Company, *Respondent*.	On Application for Enforcement of an Order of the National Labor Relations Board.

Decided and Filed December 11, 1972.

Before: Celebrezze, Peck and Kent, Circuit Judges.

Peck, Circuit Judge. This case is before the Court upon a petition by the National Labor Relations Board for enforcement of its order issued against the respondent Savair Manufacturing Company. On September 22, 1970, an election by secret ballot was conducted among the Company's production and maintenance employees, which the Union (The Mechanics Educational Society of America) won by a vote of 22 to 20, with one ballot challenged and one ballot declared void. The Company then filed timely objections to conduct which it contended affected the results of the election, alleging, *inter alia*, that the Union deceived employees into believing that they would be fined an unspecified amount if they failed to sign an authorization card and if the Union won the election.

An evidentiary hearing was held before a Hearing Examiner to resolve the issues raised by the Company. In recommending that the Company's objections be overruled, the Hearing Examiner found that there was insufficient evidence upon which to conclude that such a threat

occurred either before or after the filing date of the representation petition. He also found that the Union offered to waive the initiation fee for all employees who executed authorization cards prior to the election should the Union win the election, but that this offer of waiver was not objectionable under the Board's policy enunciated in *DIT-MCO*, 163 NLRB 1019, enf'd. *N.L.R.B.* v *DIT-MCO*, 428 F.2d 775 (8th Cir. 1970) He concluded that the election was not improperly conducted, and that the Union is the exclusive representative of all employees in the unit for the purpose of collective bargaining. The Company's petition for rehearing was denied, and the Board subsequently granted summary judgment against the Company and ordered it to bargain with the Union. The Company has refused to do so, and the Board has brought this petition for enforcement of its order.

In *Lobue Bros.*, 109 NLRB 1182 (1954), the Board held that a pre-election offer of reduced initiation fees is objectionable when the promised benefit is contingent on how the employees voted in the election or on the results of the election. In *N.L.R.B.* v. *Gilmore Industries*, 341 F. 2d 240 (6th Cir. 1965), the Court adopted the reasoning of the Board in *Lobue* and held that the economic inducement offered by a union in waiving initiation fees for those employees who sign authorization cards if the union wins the election impeded a reasoned choice because, under the circumstances of that case, the employees had been lead to believe that they were receiving an economic benefit far greater than was actually the case. (See also *N.L.R.B.* v *Pafner Automotive and Machine, Inc.*, 400 F.2d 10 (6th Cir. 1968).

In *DIT-MCO, supra*, the Board changed its policy, overruled *Lobue*, and held that an offer to waive initia-

tion fees for those who sign authorization cards prior to an election is permissible whether or not it is conditioned upon the outcome of the election. The Eighth Circuit enforced the Board's order and held that the Board's new policy of not setting aside an election when a waiver of provisional waiver of union initiation fees, whether contingent upon the results of an election or not, was within the Board's discretionary powers to regulate the conditions under which an election may validly be held. 428 F.2d at 779.

In response to the Board's petition to enforce its order, the Company relies upon this Court's decision in *Gilmore*. The Board contends that the *Gilmore* case is no longer viable because in that case the court relied upon *Lobue*, which has since been re-examined and overruled by the Board. In presenting this argument, the Board displays a misunderstanding of the relationship which exists between the Board and this Court. The Board's actions are premised upon the assumption that when the Board changed its position from *Lobue* to *DIT-MCO*, it effectively overruled this Court's decision in *Gilmore*, and that this Court must follow the Board's lead and alter its decision in *Gilmore* accordingly. Such is not the case, and we find no reason, either procedurally or substantively, to alter our decision in *Gilmore*.

We note that while there is no question of fact concerning the offer to waive the initiation fees contingent upon the Union's victory in the election, there was some controversy as to whether or not this procedure was represented to the employees in terms of a "fine". The Hearing Examiner's findings on this issue indicate the confusion concerning initiation fees, fines and assessments

that can be generated in the minds of those involved in a Union election:

"According to the uncontradicted testimony of Bridgeman, it appears that McKnight, in obtaining signatures from employees of union membership and authorization cards, told employees that they would be subject to a fine or an assessment fee if they did not sign the card in the eventuality that the union won the election. There was, therefore, a great deal of discussion among the employees as to whether they should sign the union authorization and membership card in view of the fact that regardless of their desires and how they would actually vote, they could save themselves some money in the event the union were successful. No specific amount was mentioned. Bridgeman used the word 'fine' interchangeably with 'assessment' and 'initiation fee.' His testimony is not entirely clear that McKnight used the word 'fine'. In any event, prior to the filing of the petition, because of the questions raised by employees, according to Bridgeman, McKnight telephoned Smith to find out what the union's policy was. The next day, employees asked McKnight whether it were true that they would have to pay a 'fine', McKnight answered in the affirmative and said that the employees could call Mr. Smith if they so desire and he gave them the telephon number. Subsequent to the filing of the petition, an employee meeting was held at a rented hall under the supervision of Mr. Smith at which approximately 20 employees were in attendance. According to Bridgeman, at the meeting the benefits of unionization were discussed and questions were invited from the floor. An employee asked Mr. Smith: '. . . if there was a fee, not fine, we can't call it a fine, to join, and an initia-

tion fee.' And: 'If there was a fee, you know if you didn't sign the slip [union authorization and membership card] and it was, in turn, [sic.] in before the election. There is a small fee, it was never stipulated what amount the fee should be.' According to Bridgeman, Smith answered: 'There would be a small fee.' No amount, according to Bridgeman, was ever specified. Bridgeman further testified that subsequent to that meeting, and prior to the election, Bennie McKnight told employees that if they signed the union membership and authorization card before the election, there would be no union 'initiation fee' if the union were successful at the election. Bridgeman was recalled to the stand twice. The second time he was recalled, he testified that McKnight referred to a 'fine' after the filing of the petition but was unable to specify the circumstances such as the contexts of the conversations and when and where they occurred. Under these circumstances and because of his proclivity to confuse and interchange the characterizations 'fine' with 'initiation fee', it is my finding that there is insufficient evidence based upon Bridgeman's testimony that a threat of a 'fine' occurred either before or after the filing date of the petition. Upon cross-examination, Bridgeman conceded that what Smith said at the meeting was that an initiation fee would be waived for all card signers who executed their cards before the election in the eventuality that the union won the election."

As indicated by the Hearing examiner's report, most of the facts concerning the misrepresentation to the employees were not considered by the Board because this conduct occurred prior to the filing of the petition, and the Board has determined that conduct occurring prior to the filing

of a petition will not be grounds for setting aside an election. *Goodyear Tire and Rubber Co.*, 138 N.L.R.B. 453 (1962). We do not reach an examination of this policy because we do not agree with the Board that *Gilmore* should be overruled. We simply refuse to believe that the waiver of initiation fees, contingent upon the outcome of an election, whether it is referred to as a fine, an assessment, or a waiver of initiation fees, is not coercive in the context of a union election.

The facts of this case indicate that *Lobue* and *Gilmore* are sound decisions, and we conclude that the Board abused its discretion in declining to follow the *Gilmore* decision. Accordingly, upon a consideration of the arguments presented by both sides to this petition for enforcement, we respectfully decline to follow the Eighth Circuit (*N.L.R.B.* v. *DIT-MCO, supra)*, and the Ninth Circuit (*N.L.R.B.* v. *G. K. Turner Associates*, 457 F.2d 484 (9th Cir. 1972), noting that in neither of these cases was the Court called upon to overrule a controlling precedent of its own.

We have considered the other two arguments which the respondent has presented to this Court, and we conclude that they are without merit. The record indicates that the Board's conclusion that a full and fair hearing was provided to the Company, and its conclusion that an illiterate employee was not precluded from casting a valid vote by the actions of the NLRB representative at the election are supported by a substantial evidence on the record as a whole.

Enforcement of the Board's order is denied.

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In the Supreme Court of the United States

OCTOBER TERM, 1972

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SAVAIR MANUFACTURING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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Respondent, in its Brief in Opposition, raises an issue not presented in our petition, *i.e.*, whether the Board's Regional Director failed fully to investigate objections to the election when, upon receipt of an employee's letter alleging improper union conduct during the election, he neither notified the Company or the Union of such letter, nor advised the employee that he could appear at the hearing on the Company's objections (Br. in Opp. 1-2). Respondent thus seeks to sustain the judgment of the court below on a ground rejected by that court; although the court denied enforcement of the Board's order on the ground that the Union's promise to waive initiation fees unduly interfered with employee free choice, the court rejected the contention

based on the employee letter (Pet. App. 15-16). We agree with the court of appeals that this contention affords no valid basis for denying enforcement of the Board's order. The relevant facts on this issue are as follows:

On October 15, 1970, 23 days after the election, employee Reibling wrote a letter to the Regional Director objecting to the election on the ground that the Union had engaged in certain conduct which had had a coercive impact upon the election. On October 21, the Regional Director advised Reibling that, since he was not a party to the proceeding, he had no standing to file objections, and that, in any event, his objections were untimely since they were filed more than 5 working days after the election.[1] The Director added that at least part of the allegedly coercive conduct did not appear to justify setting aside the election, that timely objections had been filed by one of the parties and were scheduled for hearing on October 28, and that, although these objections did not specifically

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[1] Section 102.69(a) of the Board's Rules and Regulations (29 C.F.R. 102.69(a)) provides that "any party" may file objections to an election. As the Board interprets this provision, individuals who do not claim to represent employees for the purpose of collective bargaining are neither considered a party to, nor ordinarily permitted to intervene in, a representation proceeding. *Association of Motion Picture Producers, Inc.*, 88 NLRB 521, n. 6; *Shoreline Enterprises of America*, 114 NLRB 716, 717, n. 1.

Moreover, Section 102.69(a) requires that, absent unusual circumstances, election objections must be filed within 5 days after the tally of ballots has been furnished. *Eklund Bros. Transport, Inc.*, 136 NLRB 471, n. 1. See *Van Tran Electric Corporation* v. *National Labor Relations Board*, 449 F. 2d 774 (C.A. 6). The tally of ballots was furnished to the parties on September 22, 1970 (Pet. App. 23).

encompass the complaints raised in Reibling's letter, some of Reibling's complaints might be brought out at the hearing (Br. in Opp. 11b-12b).

On April 7, 1971, after the Union had been certified as the bargaining representative of the Company's employees, the Company petitioned the Board to set aside the certification on the ground that it had just learned that, prior to the date of the hearing on its objections, certain employees, including Reibling, had notified the Regional Director that they wished to object to the election, but that the Director had discouraged them and had failed to inform the parties of the employees' protest or to call the employees as witnesses. In support of its petition, the Company merely attached the Director's response to Reibling's letter (A. 15-19). The Board denied the petition (A. 20-21).

In view of the fact that Reibling was not a party to the proceeding, that his objections were not timely filed, and that they appeared to be extraneous to the objections filed by the Company, the Regional Director acted reasonably in declining to notify the Company or the Union of Reibling's letter or to call him to testify at the hearing on the Company's objections. Moreover, since the Company's subsequent petition to revoke the certification was not accompanied by a specific showing respecting the nature of the conduct protested by Reibling or the other employees and the likelihood that it affected employee free choice in the election, the Board was warranted in summarily denying the petition. See *National Labor Relations Board* v. *Tennessee Packers, Inc.*, 379 F 2d 172, 178 (C.A. 6), certiorari denied, 389 U.S. 958. There was thus no abuse of the broad discretion which Congress has conferred upon the

Board to establish "the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees" and to insure that "employees' votes may be recorded accurately, efficiently and speedily." *National Labor Relations Board* v. *A. J. Tower Co.*, 329 U.S. 324, 330-331.[2]

For the foregoing reasons and for the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

APRIL 1973.

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[2] The cases relied on by respondent (Br. in Opp. 7) are factually distinguishable. In *National Labor Relations Board* v. *Brown Lumber Co.*, 336 F. 2d 641 (C.A. 6), the court held that the Regional Director improperly failed to investigate the company's election objections even though it had not served the union with a copy of the objections as required by Section 102.69(a) of the Board's rules; the court found that the union had not been prejudiced since it knew of the company's oral protest at the time of the election. That *Brown Lumber* is to be confined to its special facts is confirmed by the Sixth Circuit's subsequent decision in *Van Tran Electric Corp.* v. *National Labor Relations Board*, 449 F. 2d 774, sustaining the Board's refusal to consider objections made 56 days late allegedly due to an error by the employer's counsel. In *National Labor Relations Board* v. *Mrs. Weaver's Salads*, 439 F. 2d 1116 (C.A. 6), the election objections had been timely filed, but they were overruled because the company had failed to provide supporting evidence within 10 days; the court found that, in the circumstances presented, it was unreasonable not to give the company a 5-day extension of time.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11–16) [1] is reported at 470 F. 2d 305. The decision and order of the National Labor Relations Board (Pet. App. 18–29) are reported at 194 NLRB No. 44. The hearing officer's report (Pet. App. 30–39) and the Board's decision in the related representation case (Pet. App. 40–42) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 17) was entered on December 11, 1972. The petition for a writ of certiorari was filed on March 9, 1973, and

[1] "Pet. App." refers to the appendix to the petition. "A." refers to the separate appendix to the briefs.